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**ROYAL COMMISSION**

**ON**

**TAXATION**

**HEARINGS**

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ROYAL COMMISSION ON TAXATION

Proceedings of hearings held before  
the Royal Commission on Taxation in  
the Supreme Court of Canada Building,  
Ottawa, Ontario, commencing at 9:30  
a.m. on Saturday, January 11th, 1964.

COMMISSION

MR. KENNETH LeM. CARTER CHAIRMAN  
MR. J. HARVEY PERRY  
MR. A. EMILE BEAUVAIS  
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MRS. S. M. MILNE  
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MR. G. L. BENNETT

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INDEX TO EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
301	Brief of Canadian Bar Association.	7442.

\* \* \* \* \*







1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
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THE CHAIRMAN: Mr. Secretary, we have almost reached 9.30. Are we all assembled and ready to proceed?

THE SECRETARY TO THE COMMISSION: Yes, Mr. Chairman.

THE CHAIRMAN: Then we might start.

THE SECRETARY TO THE COMMISSION: Mr. Chairman and Commissioners, this morning you have before you a submission from the Canadian Bar Association. Mr. Ronald Merriam, Q.C., Secretary of the Association, together with a special committee which has been instrumental in the preparation of the submission, is here before you to speak to you.

Mr. Merriam will introduce his colleagues and make a few opening remarks. I should like to enter this brief into the records, Mr. Chairman, as Exhibit 301.

--- EXHIBIT NO. 301: Brief of Canadian Bar Association.

THE CHAIRMAN: Thank you, Mr. Secretary. Good morning, Mr. Merriam and gentlemen. May I offer my congratulations on your 50th anniversary. I am only sorry your brief is not presented between gold leaf covers. It is very remarkable indeed that the Association has proceeded for these 50 years, and I must say that the quality of this submission is worthy of the antiquities as well as the skill of its members. We have read the submission with a great deal of interest, and







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3 I would have expected a good presentation from  
4 the Canadian Bar Association. But I have no  
5 hesitancy in saying that I think you have certainly  
6 given me, as well as my colleagues, more than  
7 we expected; I think I speak for all of us in  
8 saying that.

9 Mr. Merriam, would you care to say a  
10 few words and introduce your associates, who I  
11 think have been before us before, I might say,  
12 and I welcome them back again.

13 MR. MERRIAM: Mr. Chairman, members  
14 of the Royal Commission on Taxation. Thank you for  
15 those words of welcome. While we thought that  
16 in 50 years we have achieved a certain stature,  
17 I am afraid that we have not achieved that affluence  
18 which would enable us to place within gold leaf covers  
19 this involved brief! On the other hand, we hope  
20 that it is a just one and valuable to you in the  
21 form in which it is presented to you.

22 The Canadian Bar Association does welcome  
23 the opportunity of presenting this brief to the  
24 Royal Commission. A great deal of effort and thought  
25 has gone into it, and we hope it will be of interest  
26 and value to you in your considerations of the problem  
27 with which you have been seized.

28 The President of the Association, Mr.  
29 Lundell, Q.C., of Vancouver asked me especially this  
30 morning to express to you and the members of the  
Commission his regrets at being unable to be present.  
As I indicated, he is in Vancouver and has found  
it impossible to be here this morning. He does







1  
2  
3 extend his apologies as well as his regrets.

4 As a sort of statement of the limitations,  
5 if you like, or the area within which the Association  
6 felt that it should confine itself in the con-  
7 sideration of the problem, I think I can do no  
8 better than read to you for the purposes of the  
9 record one paragraph in the letter of transmission  
10 which accompanied the brief. It says:

11 " The Canadian Bar Association  
12 represents lawyers across Canada who  
13 themselves and through their clients  
14 have the greatest diversity of opinions  
15 and interests. While lawyers as  
16 individuals have views on economic  
17 and political problems which are  
18 relevant to any study of taxation,  
19 it is felt that the Association cannot  
20 act as a medium of expressing the  
21 opinion of lawyers as members of the  
22 community on those problems. The  
23 Association, therefore, does not  
24 propose to advance opinions on such  
25 questions as whether rates of tax  
26 are too high, whether there is an  
27 imbalance between modes of taxation  
28 or whether our system of taxation is  
29 impeding economic progress. There  
30 are, however, many aspects of taxation  
in which the lawyer in his professional  
capacity has a direct interest and  
of which he has knowledge and experience."







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3 It is in those areas, Mr. Chairman, to which our  
4 thoughts have been directed in the preparation of  
5 this brief.

6 I have also indicated in that letter  
7 the major credit for the consultations which were  
8 held concerning the various views expressed by  
9 members of the Association, and the preparation  
10 of those views for incorporation into a brief  
11 which might be submitted to you, must be accorded,  
12 and I have great pleasure in publicly so according  
13 that credit, to the members of our Special Committee  
14 who are present here this morning. I am sure they  
15 are all known to you, but for the purposes of the  
16 record I would like to introduce them.

17 Mr. W. J. Hulbig of Montreal has acted  
18 as Chairman of that Committee, and he is on my  
19 immediate right. On my far right is Mr. S. E.  
20 Edwards, Q.C., of Toronto, Mr. Lemay of Montreal,  
21 Mr. Timothy Eaton of Montreal, Mr. George E. Thom  
22 of Montreal, Mr. Wolfe D. Goodman of Toronto, and  
23 Mr. George T. Tamaki of Toronto.

24 If I may, I should like to hand over  
25 the presentation to Mr. Hulbig and his associates.

26 THE CHAIRMAN: Thank you, Mr. Merriam.  
27 I might say that I am delighted that you have  
28 confined yourself to the area of which you speak;  
29 it seems to me most appropriate that you should.  
30 Mr. Hulbig?

MR. HULBIG: Mr. Chairman and members.  
I do not have any lengthy statement to make. On  
behalf of the committee perhaps I should say, as







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3 is obvious from the brief, that we have to act  
4 within the framework of the rules imposed upon  
5 us by the Association, and that it does not entirely  
6 and necessarily represent the individual views  
7 of the members of the committee. Perhaps it goes  
8 without saying that some of us hold quite strong  
9 views which are not properly explored here.

10 Specifically, perhaps I might say  
11 that the largest areas is the question of the  
12 treatment of capital gains. While I think that  
13 we basically agree with the statement in the  
14 brief that we are against the capital gains tax,  
15 we were not able to come to a consensus as to a  
16 positive recommendation which we could make within  
17 the framework within which we had to operate.

18 Apart from that, I have no specific  
19 remarks to make, and subject to your wishes we  
20 will now hold ourselves at your disposal for any  
21 questions which you care to ask.

22 THE CHAIRMAN: Mr. Hulbig, I suppose  
23 your conclusions are generally reached by a fair  
24 majority?

25 MR. HULBIG: That is true. The committee  
26 is speaking with one voice where we do speak, but  
27 I might say that there were some divergencies where  
28 we do not speak.

29 COMMISSIONER PERRY: I would just point  
30 out that when the accountants appeared before us  
they said that this was the case, excepting that  
the chairman's vote carried a weighting of about  
80 per cent.







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THE CHAIRMAN: Being accountants, of course, they reduced it to percentages.

MR. THOM: Unfortunately it is the reverse here!

THE CHAIRMAN: It being your birthday, we have invited one of your own members to lead the questioning. If it were not for that you might have got a chartered accountant.

Mr. Coyne, I think we are ready to proceed with the submission now. Will you go ahead?

MR. COYNE: Thank you, Mr. Chairman.

Mr. Hulbig, perhaps we could start out by discussing some of the general ideas which are dealt with in the first part of your brief.

I first of all direct your attention to the section dealing with legislative standards, which commences at page 3. It seems to me that there you set forth the inevitable dilemma of the draftsman in these words. You say:

" Generally speaking there have been two approaches to the drafting of tax legislation. One is to enact all rules and principles. The other is to spell out the tax consequences in some detail. It is difficult to be dogmatic in making generalizations as to which approach is preferable. In some cases odd principles leave too much uncertainty and room for dispute and are not adequate to deal with a problem. On the other hand, it is







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3 impossible to cover every situation  
4 specifically. Where the rules become  
5 too specific possible situations tend  
6 to be overlooked. When such situations  
7 are discovered further detailed rules  
8 are often added so that the Statute  
9 becomes lengthy, complex and difficult  
10 to construe."

11 Then it seems to me that the dilemma  
12 is still present among the five desirable objectives  
13 which you set forth. If reasonable certainty is  
14 to be achieved, this experience suggests that the  
15 language cannot remain simple and clear. Again,  
16 if the language is kept simple and clear, one is  
17 driven away from the determination of tax liability  
18 on the basis of readily ascertained objective facts  
19 and towards determinations which rest on uncertainty  
20 and ill-defined standards, such as reasonableness  
21 and the purpose of a transaction, and the like.

22 In this context I should like to put  
23 two propositions to you, and then invite your  
24 comments. The first proposition is this, that  
25 in drafting a good tax act it is not sufficient  
26 to adopt a series of mutually inconsistent objectives  
27 and then endeavour to work out an acceptable com-  
28 promise between them. It is necessary rather to  
29 decide at the outset what type of tax act is best,  
30 and proceed accordingly.

The second proposition I propose -- and  
perhaps I could give them both to you at the same







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3 time because they bear some relation one to another --  
4 is that one reason why we have come down heavily  
5 in this country in favour of specific rules, with  
6 the inevitable complexity which results, is the  
7 ingrained reluctance on the part of the legal  
8 profession, and in particular the courts, to look  
9 through the form of a transaction to its substance  
10 and to consider such abstract concepts as the purpose  
11 of a transaction rather than the form which it happens  
12 to take.

13 I have been a little wordy, but I just  
14 hold out those propositions and invite a little  
15 general discussion upon them.

16 MR. EDWARDS: I see that Mr. Hulbig  
17 is looking at me. I would think that one of our  
18 main criticisms of the present statute is that  
19 some of these objectives which we have mentioned  
20 here are sometimes lost sight of and are not kept  
21 in mind consistently in drafting the statute. I  
22 think certainly that in drafting any particular  
23 position I would agree that you cannot adopt in-  
24 consistent objectives and work out a compromise.  
25 I think you have, in dealing with each particular  
26 problem under the act, to arrive at what is the  
27 best approach and follow that approach consistently.

28 What we meant to say here, I think, was  
29 that different problems lend themselves to different  
30 types of solutions. For example, the problem of  
deductability of expenses must necessarily be dealt  
with in fairly general terms, whereas other problems







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3 which are dealt with in many specific sections of  
4 the act can be dealt with more specifically. It  
5 is our view that the objective of a good tax statute  
6 should be kept in mind and should not be allowed  
7 to get out of proportion, as we think they certainly  
8 did in two or three fields specifically mentioned,  
9 such as the question of corporate distributions,  
10 and the question of associated companies. In those  
11 cases we think that the statute was allowed to grow  
12 amendment on amendment without the draftsmen re-  
13 thinking the problem, and some of the objectives  
14 which we have mentioned here were lost sight of.  
15 Maybe I am getting away from some of your obser-  
16 vations, but I think that that is the contention  
17 which we were driving at.

18 MR. COYNE: I take it that what you  
19 are saying, Mr. Edwards, is that in a sense a piece-  
20 meal approach is necessary in this sense, that  
21 depending on the particular problem with which you  
22 are dealing it may be advisable to pursue the  
23 objective of reasonable certainty, whereas in some  
24 other problem it may be reasonable to pursue the  
25 objective of clear and simple language. But they  
26 are not necessarily general objectives to be pursued  
27 throughout the act.

28 MR. THOM: I might just take issue with  
29 Mr. Coyne's remark about law and the courts do not  
30 tend to look through the form to the substance.  
That may be so. But we are dealing with statutes,  
and when a statute speaks clearly it is not the  
business of the court to impose policy which is not







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3 expressed by the statute. To that extent, yes, form  
4 is observed by the law. However, there are other  
5 whole areas of the tax law which are left to the  
6 courts, such as questions of reasonableness of  
7 deductions, the quality of the man, and so on.  
8 There are great areas of intent and purpose and  
9 substance left to the courts.

10 Our complaint here is that where the  
11 statute has sought to impose special rules it has  
12 failed to do so adequately. Take a specific case,  
13 that of associated companies. The rules relating  
14 to those companies proved to be so unworkable and  
15 inadequate for the purpose which was intended but  
16 never stated. The whole matter has now been put  
17 back into a question of general principles con-  
18 cerning what will or will not constitute an associated  
19 company.  
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2 That is a question which is now unfortunately left to  
3 the minister instead of the courts, but the policy  
4 that lay behind the associated companies was never  
5 mentioned except in so far as you can detect it from  
6 some very detailed, complicated and, as it proved out,  
7 unworkable rules. That is our first comment. There  
8 must be reasonable certainty to which it could apply.  
9 There was no reasonable certainty until the amendment  
10 last fall. We feel that is a late development.

11 MR. COYNE: Do you feel that sort of  
12 development is an advantage? In other words, would  
13 it be fair to say that you are urging an extension of  
14 these general tests and you feel the courts cannot  
15 apply these tests through their ordinary mechanism?

16 MR. THOM: Would you expect us to say that?  
17 I think the courts are quite competent to deal with  
18 problems of generality and problems of specific inter-  
19 pretation.

20 MR. EDWARDS: I think a lot of problems  
21 which have developed which may be blamed on the  
22 courts really arise from inadequacies in drafting the  
23 statute, which we think could have been avoided if  
24 there had been a greater amount of time of talented  
25 persons devoted to the amendment process in the  
26 statute.

27 To go back to your other point, I think  
28 that while you can make some very nice general  
29 sounding statements about how a tax statute should be  
30 drafted, I think actually sometimes when you come to  
apply those statements to specific problems you have  
to modify your views because not all problems can be  
dealt with simply and clearly.

THE CHAIRMAN: Mr. Coyne, on that matter I







1  
2 would like to ask one question on a point which I do  
3 not understand at all.

4 I thought over the years my legal friend  
5 had informed me that simplicity and clarity were  
6 mutually exclusive. It seems to me when I want to  
7 write English in a simple form I try to keep the  
8 sentence down to one, two or three thoughts and  
9 preferably to words numbering no more than twenty,  
10 whereas a legal draftman will go on to eighty or one  
11 hundred words. I say why do that, why not break it up  
12 three or four times so we have a few thoughts here and  
13 a few thoughts there and a few thoughts there so we  
14 can all understand it instead of having to paraphrase  
15 this whole structure of over eighty or one hundred  
16 words to understand it. His answer is that it is for  
17 greater clarity. Well, perhaps it is more clear to him,  
18 but it is never more clear to me. Am I being fair in  
19 that statement? I think our statutes are full of  
20 great long sentences, sentences going on forever, to  
21 achieve greater clarity. Is that the way a draftsman  
22 achieves greater clarity?

23 MR. LEMAY: Maybe it is because the rules  
24 concerning interpretation of a statute limit the  
25 scope of a statute to the words actually used in the  
26 statute which cannot be extended by implication or  
27 otherwise.

28 COMMISSIONER GRANT: You mean the taxing  
29 statute?

30 MR. LEMAY: Yes.

THE CHAIRMAN: Do you mean in all statutes  
or do you limit your remark to taxing?

MR. LEMAY: It would be the same in  
criminal matters.







1  
2 MR. HULBIG: You are seeking the simple  
3 way. The legal draftsman seeks to do the same thing.  
4 The legal draftsman may be very skillful or less skill-  
5 ful, and the more skillful he is the more clearly he  
6 can express it.

7 THE CHAIRMAN: You may be right. It may be  
8 his capacity at one reading to digest ten different  
9 ideas and my capacity to digest two or three.

10 MR. HULBIG: That is not my point. I think  
11 the legal draftsman should be skillful enough to be able  
12 to express a matter of complication in terms any of us  
13 can understand. This is what we are saying here, with  
14 all due respect to those who preceded in this field.  
15 we think a better job can be done and we think in the  
16 first part we are setting up standards. We cannot  
17 always meet the standards, but one must have standards  
18 at which to aim.

19 THE CHAIRMAN: Then you do not agree with  
20 my statement that simplicity and clarity are  
21 mutually exclusive?

22 MR. HULBIG: I take issue with it.

23 COMMISSIONER PERRY: In normal communi-  
24 cation, such as the letter, the reader only wants a  
25 broad message from you; he is reading it receptively  
26 and will understand an idea indicated in only a few  
27 words. The legal draftsman has to take the point of  
28 view that his reader is going to make every possible  
29 effort to misunderstand him, and therefore his job is  
30 to communicate with people who generally are refusing  
to listen to his message. That makes me feel rather  
pessimistic in the long run as to ever developing a  
statute -- which is simply a very advanced exercise  
in the art of communication -- to the point where the





1  
2 message comes through clearly and unchallengably to  
3 people who are refusing to understand, and this is  
4 their divine right. Every taxpayer particularly has  
5 not only the divine right but it is an active crusade.

6 MR. GOODMAN: There is tremendous disparity  
7 in the standard of drafting even of different sub-  
8 sections of the same section. I have before me section  
9 137 which deals with two ideas, one relating to  
10 artificial transaction, three and a half lines ex-  
11 pressing a thought in this very simple language, and  
12 section 137(2) which must be read together with 137(3),  
13 which is a masterpiece of ambiguity, an attempt to  
14 deal with several ideas together without clearly indi-  
15 cating whether a particular set of circumstances may  
16 result (a) in requiring that an item be included in the  
17 taxpayer's income, (b) require that it be treated as a  
18 payment to a non resident person subject to with-  
19 holding tax, or (c) deem to be a gift to which gift  
20 tax applies.

21 Presumably if the opening words of section  
22 137(2) are applicable and you know there is no non-  
23 resident involved, you can assume it is not going to  
24 be treated as a payment to a non-resident person, though  
25 maybe even that is going too far. But whether it is  
26 to be treated as included in computing a taxpayer's  
27 income or treated as a gift is something for which we  
28 have no guidance whatever. This I would simply class  
29 as bad drafting. It is not a question of whether the  
30 draftsman was aiming at simplicity on the one hand or  
exactness of expression on the other; it is bad.

COMMISSIONER PERRY: Take the associated  
companies case, everyone knows what the purpose is,  
everyone knows what the law is trying to do.







1  
2 MR. THOM: May I take exception to that  
3 statement. As the law applied it had the most in-  
4 equitable and preposterous application according to  
5 its own rules.

6 COMMISSIONER PERRY: Let us forget about  
7 the rules. I think everyone would concede what the  
8 government is trying to do is to limit the benefit to  
9 one taxpayer.

10 MR. THOM: I do not.

11 COMMISSIONER PERRY: Once you get beyond  
12 that, you get into the question of how you settle  
13 this, but suppose the law was just to say that.

14 MR. THOM: It has now, Mr. Chairman, after  
15 ten years of struggling with rules which had an in-  
16 equitable, preposterous effect, at last they have  
17 stated a principle which can be understood, as you say,  
18 by ordinary men of goodwill and common sense.

19 COMMISSIONER PERRY: If this is to be the  
20 principle you could reduce the whole Income Tax Act  
21 to relatively few sections.

22 MR. THOM: Would it be a fair comment to  
23 say that those responsible for the preparation of the  
24 tax law have not been comforted in the capacity of  
25 the courts to give expression to their ideas in  
26 attempting to codify the detail, the rules, rather  
27 than permitting greater recourse to the courts for  
28 working out principles.

29 COMMISSIONER GRANT: Mr. Thom, do you not  
30 think that to some extent the draftsman is the victim  
of the jurisprudence to which he must adhere? For  
instance, he is, in drafting a taxing statute or an  
amendment to it, first of all confronted with the  
fact that the court will interpret that strictly







1  
2 and that the court will not inquire into the in-  
3 tention of the legislature if the act or the section  
4 which is under interpretation is in itself clear. That  
5 is, it is bound to accept the meaning of the section  
6 if the section is clear, which may be good legislation  
7 or it might be bad legislation, but the court will not  
8 correct it if it is bad, the court will merely inter-  
9 pret it and leave it to the legislature to correct.  
10 The legal draftsman is confronted with this every time  
11 he is drafting a statute or an amendment. Therefore,  
12 he is not dealing with an equitable matter, he is  
13 dealing with a strictly legal matter and the strict  
14 test of legal matters in so far as the interpretation  
15 is concerned. For that reason, he tries to spell this  
16 out in great detail in order to avoid any confusion  
17 and so that the intention of the legislature will be  
18 clear. In so doing, he often gets himself tangled up  
19 in his own net.

20 MR. THOM: I think the lawyers feel, as  
21 the accountants do frequently, that certain things  
22 might have been better left alone. Take section 85  
23 which has to do with business reserves; there the  
24 legislative draftsmen tried to codify the concept,  
25 with considerable dissatisfaction on all sides. It  
26 might have been better if they had put the principle  
27 and left the interpretation to be decided by the  
28 court.

29 COMMISSIONER GRANT: The courts, composed  
30 of learned judges -- this is just my own observation  
-- may not fully appreciate the principles involved  
and may not have evidence before them on which they  
can base the opinion to which the draftsman felt it  
should be reached.





1  
2 MR. THOM: The judicial approach is not  
3 perfect but it works pretty well we think.

4 MR. LEMAY: I believe an example of what  
5 the Chairman was saying about simplification and  
6 limitation of the number of words is brought out by  
7 the interpretation of the Taylor case in section 46,  
8 paragraph 4, where the words "misrepresentation" and  
9 "Fraud" are used.

10 It was the intention of all boards and all  
11 the organizations that I know that there be a limi-  
12 tation so that the taxpayer be protected, and in the  
13 past until the Taylor case the courts had inter-  
14 preted the word "misrepresentation" as being synonymous  
15 with "fraud". Using redundant words like that certainly  
16 does not bring clarity to the act.

17 The same applies to section 137, paragraph  
18 2 to which Mr. Goodman was referring. In the second  
19 line there we have the words "transactions". Trans-  
20 actions in the province of Quebec has a very specific  
21 meaning within the civil code. Is that the meaning  
22 of the word "transaction" that the draftsman had when  
23 section 137 paragraph 2 was prepared or not? It  
24 certainly will give rise to litigation.

25 COMMISSIONER PERRY: Do you we have to take  
26 for granted that the more clearly the law expresses  
27 the general intention the less clear will be the  
28 application of that intention to individual cases?  
29 This is really what bothers me. Any section of the  
30 law has an intent which is fairly identifiable and  
which could be expressed, as the Chairman says, in a  
few simple words. The explanatory note may express  
it fairly clearly, but it is a long stretch from that  
to the adaptation to a single circumstance.







1  
2 MR. EDWARDS: Mr. Chairman, in some cases  
3 the detailing of results is necessary. I think an  
4 example might be section 85(1) dealing with amalga-  
5 mations which sets out quite clearly and as far as I  
6 know to the satisfaction of most people the results of  
7 an amalgamation. That is a case where I think specific  
8 rules are probably necessary and virtuous. But I  
9 think our criticism of the act is that in some sections  
10 the draftsmen have gone into a rather detailed pro-  
11 visions creating exceptions and exceptions to the ex-  
12 ception where it was not necessary, and where by  
13 applying a better drafting technique it could have been  
14 avoided.

15 COMMISSIONER PERRY: It still leaves the  
16 basic issue, I think, that in time they would be able  
17 to program and compute it so they will draft excellent  
18 law covering every conceivable situation that could  
19 arise under the section. The section might turn out  
20 to be eighty-five pages long.

21 MR. THOM: If they do, they will probably  
22 be hired by a large organization like C.P.R.

23 Speaking to the point about the generality  
24 expressed in simple language, we do deal with that in  
25 our Part III, comment regarding administration, where  
26 we suggest there should be a greater degree of inter-  
27 pretation provided by the department for the infor-  
28 mation of the taxpayers.

29 THE CHAIRMAN: I am glad you mentioned that.  
30 It occurred to me that we are going to come to this.

I think we might move on.

MR. COYNE: There is just one aspect I  
would like to pick up that arises indirectly from a  
remark of Mr. Thom's.





1  
2 One remark that has been made from time to  
3 time, though not I may say by the Institute of  
4 Chartered Accountants, is that there should be a  
5 simple rule for interpreting business income and that  
6 on the basis of some such phrase as "generally accepted  
7 accounting principles". Has the committee given any  
8 consideration to a concept of this kind or would you  
9 care to comment on it? Specifically, would it meet  
10 the standards which you have set forth in the section  
11 we have been discussing as being desirable aspects of  
12 the statute?

12 MR. THOM: I think we concur with our brother  
13 practitioners that it is not a very feasible proposition,  
14 if I understand the accountants' presentation correctly.  
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3 MR. COYNE: They had a rather special  
4 reason for disguising it, relating it directly to the  
5 accounting profession as such. It would be interesting  
6 to know why you feel that it should be discarded  
7 independent of any reasons that the C.I.C.A. may have  
8 put forward.

9 MR. THOM: It is their idea. We take  
10 their lead.

11 THE CHAIRMAN: That is not very helpful,  
12 I don't think. Mr. Coyne asked you whether you  
13 could set a criteria down here. That is a rather  
14 different question.

15 MR. LEMAY: Mr. Chairman, if we  
16 examine the jurisprudence on the point, we find that  
17 the courts at the present time have taken into  
18 account both the commercial practice and the  
19 accounting practice. Then in a subsequent judgment  
20 we find out that the courts have come to the  
21 conclusion that the accounting practice in fact  
22 reflects the commercial practice and we have to go  
23 back to commercial practice to determine whether a  
24 business is really a business expense or not. That  
25 is, if it is the custom of the trade to incur a  
26 certain type of expense in order to create income  
27 and if it is not prohibited by the act specifically,  
28 then it should be admitted.

29 Of course, you have accounting practices  
30 with supplements which can set up concurrent  
practices between various firms where a member of the  
C.I.C.A. will say, "Well, we know of various firms





1  
2 that treat such an item of expense as really an item  
3 of expense", but their testimony on that point is  
4 only substantiating the fact that it is an expense  
5 admitted by commercial practice. I think that is it.

6 MR. COYNE: You don't think that  
7 Section (4) and the word "profit" requires any  
8 amplification?

9 MR. LEMAY: As such, no.

10 MR. GOODMAN: We do not consider that  
11 there is any significant gain in clarity or precision  
12 by reference to some external standard set down such  
13 as accepted accounting practices. The courts in  
14 fact make use of these tests in applying the  
15 provisions.

16 MR. COYNE: And specifically which will  
17 have the meaning of the word "profits".

18 MR. GOODMAN: Yes.

19 MR. TAMAKI: I think the problem however  
20 is not quite that simple. There are various  
21 statutory provisions found elsewhere in the act which  
22 are definitely contrary to commercial practices and  
23 accounting principles and when the courts, of course,  
24 find provisions in the Act, they apply them.

25 THE CHAIRMAN: Mr. Tamaki, I think we  
26 all recognize that whatever is laid down as standard  
27 will be subject to what comes later in the Act and  
28 specific provisions in the Act which change these  
29 matters. The question which I have in mind is: is  
30 the word "profit" standing by itself good enough or  
does it need any help by any further wording. I think







1  
2 you have given us our answer. I think you say it is  
3 good enough.

4 MR. TAMAKI: Yes.

5 MR. COYNE: Turning to a somewhat  
6 different or more detailed point on page 7. You deal  
7 rather briefly with the subject of the Act or the  
8 regulations and you say: "The regulations deal with  
9 several major substantive matters. For example,  
10 the provisions for claiming capital cost allowances  
11 are contained in Part 11 of the regulations. These  
12 provisions are relatively permanent and are very  
important."

13 Then you refer to Part 18 of the  
14 regulations and suggest that these provisions might  
15 more properly be contained in the Act and conversely  
16 that there are detailed subsections of Section 83A )  
17 might more properly be contained in the regulation.  
18 From just a cursory glance at these two provisions,  
19 it would seem that Part 18 should come in the Act  
20 because it is very short and Section 83A should go  
in the regulations because it is very long.

21 Have you considered any specific standards  
22 or rules which may determine whether a particular  
23 matter should be dealt with in a statute or in a  
regulation?

24 MR. EDWARDS: Well, I think the  
25 shortness or longness of the provisions is maybe one  
26 consideration but certainly not the only consideration.  
27 I think another consideration is the likelihood of  
28 frequent change. Part 11, for example, of the  
29  
30





1  
2 regulations and Part 18 of the regulations have been  
3 relatively permanent. On the other hand Section 83A  
4 has been subject to fairly frequent change. That is  
5 one aspect.

6 Another is that Section 83A deals with  
7 a specific industry. In other words Section 14 and  
8 Part 11 deal with taxpayers generally, whereas  
9 Section 83A deals with a specific type of business.  
10 I think that is a factor which would tend to indicate  
11 that Section 83A might well be dealt with in the  
12 regulations. There may be other members of the  
Committee will have other criteria in mind.

13 MR. GOODMAN: I think we might say,  
14 Mr. Chairman, where a regulation expresses a general  
15 principle which is of general application to a broad  
16 class of taxpayers, there are strong reasons for  
including it in the statute itself.

17 Where it merely amplifies a general  
18 principle expressed in a statute and applies it to a  
19 specific class of taxpayers, we would prefer to see it  
20 in the regulations. These are only guide lines  
21 as to the principles that must be followed and  
22 there may be cases where it may be very immaterial  
23 whether it is in the statute or in the regulations.

24 MR. COYNE: I take it, you do not draw  
25 any distinction in essence between legislation that  
26 should be enacted by the Parliament of Canada and  
27 legislation that may be enacted by the Governor-in-  
28 Council. In other words, I interpret your remarks  
29 to mean largely it is a matter of general convenience  
30







1  
2 as to whether legislation should appear in one form  
3 or the other, although you would agree there are  
4 distinct forms.

5 MR. TAMAKI: I think so.

6 MR. COYNE: Specifically one  
7 involving ~~open debate~~ in Parliament and Parliament  
8 enactment and the other involving merely the passing  
9 of an order-in-council.

10 MR. LEMAY: There is a big difference  
11 in the law that legislation by Governor-in-Council  
12 may not contradict or conflict with legislation which  
13 Parliament has enacted.

14 MR. COYNE: Quite so. On the other  
15 hand, as you and I well know, Mr. Lemay, it is  
16 possible to draft a statutory provision in sufficiently  
17 broad language that the Governor-in-Council has a  
18 very broad field in which to operate.

19 MR. THOM: Mr. Chairman, I think  
20 historically you will find the answer to Mr. Coyne's  
21 question when the matter of capital cost allowances  
22 and depletion was dealt with, it was dealt with by  
23 two or three statutes of the Act and two very  
24 complicated regulations, regulations which have been  
25 amended to bring them into line with the Act.

26 Then Section 83A was enacted, which  
27 is also the section which was amended frequently and  
28 for some reason they left it in the Act.

29 We say this sort of thing should be in  
30 a regulation or it should be developed and adjusted  
to the commitments of that particular industry. It is





1  
2 too cumbersome to have it in the statute.

3 MR. COYNE: Also too detailed.

4 MR. THOM: Yes. There are pages and  
5 pages and pages of 83A. It is good for about two or  
6 three pages a year.

7 MR. HULBIG: Would it be fair to say  
8 we have not, as a committee, noted abuse in the use of  
9 Order-in-Council of this Act. In other words, I don't  
10 think we felt this power had been abused to any  
11 great degree so far. Therefore we have made no  
12 point in general but we did not feel in this technical  
13 area that this power has been abused. Is that a  
fair statement?

14 MR. EDWARDS: Yes, that is fair.

15 MR. COYNE: You have generally noticed  
16 the complete reverse.

17 MR. EDWARDS: That is right.

18 MR. HULBIG: I think generally speaking  
19 probably matters of policy should be dealt with in  
20 statute and the regulations should deal with detailed  
21 matters to amplify and expand any policy but not to be  
contrary to it.

22 COMMISSIONER GRANT: It provides the  
23 machinery.

24 MR. HULBIG: I think it should be  
25 clearly on the record to this effect that we are  
arguing beneath that.

26 MR. COYNE: In many cases there is the  
27 question of choice as to which would be more  
28 appropriate, depending upon where you happened to draw  
29  
30







1  
2 the line.

3 MR. THOM: I might make some comment as  
4 to the comment raised by both the accountants and  
5 ourselves that the annual sub-amendment of the  
6 statutes is unduly dilatory and cumbersome. Some  
7 matters may be dealt with only annually by amendment  
8 of the statute. Other matters can be dealt with  
9 quickly and efficiently and adequately by regulation,  
10 pursuant to a general policy, which, of course,  
11 Parliament must pass as law.

12 COMMISSIONER:PERRY: I am just wondering  
13 -- I don't know whether this is the point to raise  
14 this question or not. What is in your experience of  
15 the extent to which the Department of National  
16 Revenue consults with outside people in drawing up  
17 regulations? Do they get much of the benefit of  
18 outside experience or advice in drawing a regulation?

19 MR. HULBIG: I don't know about the  
20 gentlemen here. Has any of you ever been consulted  
21 by the Department of National Revenue on such a  
22 matter?

23 MR. THOM: Let us say we move towards  
24 them. I don't know whether they move towards us.  
25 We all have clients.

26 MR. COYNE: Well now, moving to the  
27 next section in which you deal with ministerial  
28 discretion; you indicate your general bases of your  
29 objections to discretion.

30 Then your recommendation on page 9 is  
very specific, to wit: "discretion provided in s





1  
2 section 138(a) of the Income Tax Act be removed?

3 *I take it* I take it from this that section 138(a)  
4 recently enacted is the only case in the present act  
5 where you feel discretion is significant and is un-  
6 desirable. There are a number of minor instances in  
7 which there is discretion at the present time, I  
8 believe, under the present statute other than this  
rather major ---

9 MR. LEMAY: There are sections 13, there  
10 is section 21 and 22, for instance where if a man and  
11 and wife are partners and if proper evidence can be  
12 brought before the court then definitely the assess-  
ment should be annulled.

13 THE CHAIRMAN: What is your recommendation  
14 with regard to the discretion in the section.

15 MR. COYNE: The only specific recommendation  
16 in this brief is with regard to section 138(a), not  
17 with regard to these other sections and I think my  
18 memory is that you make some general remark at the  
19 commencement of the brief to the effect that discretion  
20 has been very largely removed except in a few minor  
instances.

21 MR. HULBIG: These are our assumptions.  
22 We did discuss these items. We felt, however, they  
23 were comparatively minor or we could not agree.

24 MR. LEMAY: I think we are all in agreement  
25 in fact with the right of the taxpayer to go to court  
26 when facts would prove him to be right and he should  
27 not be denied this right of access to the courts.

28 MR. EDWARDS: My recollection as to our  
29 discussion is not very good but I think certainly we  
30







1  
2 are unanimously opposed to ministerial discretions  
3 in the Act and I am not sure whether the reason --  
4 we didn't mention the other ones that we were not  
5 in agreement or whether it was simply they were not  
6 sufficiently important to mention specifically.

7 MR. THOM: I will concur with Mr. Edwards.  
8 This could have been ten times longer if we had dealt  
9 with every small point. I think as a group we feel  
10 discretion is undesirable.

11 MR. COYNE: He was ~~That recommendation~~  
12 ~~ordinarily would not have been~~ extended parti-  
13 cularly. If you had recommended all discretionary  
14 powers in the Act are to be removed -- that was what  
15 led to my question.

16 MR. THOM: There was also consideration  
17 of 138(a). We laid emphasis on it. That is the  
18 answer.

19 MR. EATON: We were all so interested in  
20 138(a). I think we can state it as unanimously that  
21 we ~~hate~~ ministerial discretion in any section.

22 THE CHAIRMAN: You might just settle for  
23 that.

24 MR. COYNE: Well now, if we may turn to  
25 the next section in which you deal with the review  
26 of tax legislation commencing at page 10. You state  
27 in the third paragraph:

28 "We question the need for total secrecy  
29 of tax legislation before introduction  
30 in Parliament".

My question would be: If secrecy is to  
be less than total, can you offer any suggestion or  
standards or rules as to the sort of matters where,





1  
2 in your view, secrecy would have to be preserved  
3 and the sort of ~~matters~~ in respect of which secrecy  
4 may be dispensed with.

5 MR. HULBIG: Certainly where changes of  
6 rates are contemplated, I will call that secret.

7 MR. COYNE: That would presumably be  
8 quite clear cut.

9 MR. HULBIG: Yes. I think in our discussions  
10 we dealt with whether it would be possible to set a  
11 date -- I am speaking from memory now, to set a date  
12 and to come back to that date after discussion of the  
13 particular matter if advantage may be taken by the  
14 taxpayer as the result of the outcome of the discussions  
15 and so on. It may be six months. It might even be a  
16 year. In other words, people would be on notice that  
17 if they did go through with the transaction, they  
18 would take the consequence. Does this meet with your  
19 approval?

20 MR. COYNE: Is this contemplated by the  
21 procedure which is sometimes followed by the Congress  
22 in the United States?

23 MR. HULBIG: That is what we had in mind,  
24 yes.

25 MR. EDWARDS: It would necessarily be  
26 examined by the Minister of Finance, what he thought  
27 was necessary to keep secret and what might be  
28 opened up before debate. I think that would be a  
29 general guide that it would be secret only if people  
30 could take advantage of it if they knew about it.

THE CHAIRMAN: I suppose there are a lot  
of matters other than rates, a lot of changes in







1  
2 legislation other than respective rates where advantage  
3 is to be taken if the changes are known in advance  
4 of their enactment.

5 MR. EDWARDS: It may be that you would have  
6 to weigh the pros and cons in each case.

7 In some cases even if some advantage could  
8 be taken the value of public discretion might outweigh  
9 that. It would have to be determined in each case.  
10 In certain cases it was quite clear that people could  
11 take undue advantage and then probably secrecy would  
be required.

12 MR. COYNE: But the appropriate person to  
13 determine this in your submission would be the Minister  
14 of Finance. It is his problem.

15 MR. THOM: Yes.

16 MR. HULBIG: Well, for example, suppose  
17 you were looking for an alternative to ministerial  
18 discretion in section 211-4 where it was going to  
19 confer a reduction of ministerial powers, certainly  
20 there would be no need for secrecy of such a dis-  
cussion.

21 MR. COYNE: Well then, to move on ---

22 THE CHAIRMAN: Before you leave that, Mr.  
23 Coyne, I think this is pretty important. I am  
24 concerned about this suggestion because I am dubious  
25 as to its workability. In many instances a great  
26 number of changes here would affect, say, the re-  
27 organization of companies and certainly if one puts  
28 a taxpayer on notice if the law is changed, as has  
29 been discussed at this particular time, perhaps three  
30 or four months before the budget and transactions which





1  
2 are affected by this are going to be held up for  
3 three or four months or they are only going to be  
4 entered into with considerable risk; is a taxpayer  
5 better off to be sitting waiting for something to  
6 happen three or four months later knowing if it goes  
7 one way it will be retroactive.

8 It seems to me one should avoid that kind  
9 of thing. You quote the precedence in the United  
10 States. There has been an awful lot of trouble  
11 there I think by the fact they introduced legislation  
12 and it would take a year to put it through. I am sure  
13 it must have had a very unpleasant effect upon a  
14 number of business transactions.

15 MR. THOM: I think perhaps our thought there  
16 is that the first sentence should be read with the  
17 next sentence "It appears that the responsibility for  
18 the preparation and evaluation of the effects of tax  
19 legislation rests on too few people." Many many  
20 sections we feel could be reasonably dealt with by  
21 the committee, which is our recommendation. It could  
22 be referred to a Joint Committee of the Board and  
23 Accountants.

24 I am  
25 THE CHAIRMAN: / not quarrelling with you  
26 on that subject. There are certainly many things  
27 where secrecy is of no significance. I am quarrelling  
28 with the fact where a section is of importance, it  
29 may be possible to put the legislation forward and they  
30 certainly will notice if it be enacted, it will be  
enacted retroactively. That I do not like.

MR. GOODMAN: In that connection we seem  
at the present time to have the worst of both possible  
worlds.







1  
2 I think, for example, of the proposed legislation of  
3 1963 dealing with associated corporations. The terms  
4 of the original budget resolution applicable to the  
5 1963 tax year, a year which had already ended in  
6 many cases, when the resolution was finally passed  
7 was applicable to the 1964 taxation year, which  
8 was already in progress for many companies. We had  
9 no notice of this. Nevertheless, in effect it was  
10 retroactive. In addition to the repeal of Section 18,  
11 which may have created some abuses, it was repealed  
12 retroactive to the commencement of the 1963 taxation  
13 year, with considerable hardship to some taxpayers  
14 and considerable advantages no doubt to others.

15 Whatever advantage may be gained through  
16 budget secrecy, I think it requires the concomitant  
17 that the legislation be not retroactive in fact  
18 unless there are the strongest reasons for it so  
19 being. If we are to gain advantages from discussion  
20 of legislation, we have to accept a certain degree  
21 of retroactivity after the public announcement, which  
22 is not unfair. But what is unfair is to have  
23 retroactivity without any public announcement.

24 MR. EDWARDS: In some cases, Mr.  
25 Chairman, there has been legislation which is not to  
26 take effect until some future time. For example, I  
27 think that in 1960 the advantages related to  
28 associated corporations and were to take effect only  
29 in years commencing after a certain date in the future.  
30 Similarly, changes in withholding tax rates this  
year would take effect only at certain dates in the





1  
2 future. In those cases we lose the benefit of public  
3 discussion because of secrecy. But taxpayers still  
4 have the opportunity to take steps in the meantime.  
5 So that that is a case where certainly there seems  
6 to be no good reason for secrecy.

7 COMMISSIONER PERRY: It seems to me  
8 that what sort of system the people want is the  
9 kind of system which we have excepting that they want  
10 more time in the process. Resolutions in the budget  
11 speech are a public announcement of the minister's  
12 intentions. They are debatable and discussable,  
13 and quite often changes do result from an examination  
14 of the resolutions, as we all know. But it seems  
15 to be the next phase where the period is distorted,  
16 which is an examination of the resolutions them-  
17 selves, where quite often the bill is introduced in  
18 one week and gets the second reading the next week.

19 If there were some requirement that a  
20 taxing statute be allowed to stand for at least a  
21 month, that might meet a good bit of the objections  
22 which have been raised. Perhaps I am putting a  
23 proposition here in stating the thing in that way.  
24 Is that the sort of discussion you want, or do you  
25 want the right of public discussion of the minister's  
26 intentions to make a certain change in the law,  
27 which he announces perhaps even before the session,  
28 and which is public knowledge and becomes a matter  
29 of public examination?  
30

MR. EATON: I think that is the aspect  
that we have been hitting, Mr. Chairman -- the pre-bill







1  
2 discussion period, if you like.

3 THE CHAIRMAN: Let me see if I under-  
4 stand this. You say the pre-bill discussion period.  
5 You mean after the budget an opportunity is given to  
6 discuss the intentions of the minister before the  
7 bill is drawn?

8 MR. EATON: Well, both I think. Both  
9 as opposed to the time after the bill is introduced  
10 in the house, which has not seemed to work very  
11 effectively in promoting intelligent consideration,  
12 and change where necessary. I do not think the  
13 extension of the period during which the bill is to  
14 remain standing would solve that problem.

15 THE CHAIRMAN: You think that the thing  
16 is pretty well frozen by the time the bill is  
17 introduced?

18 MR. EATON: History would seem to bear  
19 that out.

20 COMMISSIONER PERRY: Not the history  
21 of the recent budget!

22 MR. GOODMAN: I think we do have some  
23 precedents, Mr. Perry, for the introduction of  
24 legislation in a draft bill form to stand over to the  
25 next session. I think, for example, of preferred  
26 profit-sharing plans or the Estate Tax Act. I think  
27 that all of us gained a good deal from the  
28 opportunity to reflect upon that without being  
29 stampeded in the normal pattern of budget enactments.

30 COMMISSIONER PERRY: This business of  
pre-budget announcements raises quite an important





1  
2 issue, because the secrecy requirement is not simply  
3 because of the advantage that might be taken of  
4 knowledge, but mainly it rests on the fact that  
5 disclosure usually has to be all or nothing. In  
6 other words, you cannot have a few people having  
7 advance information, whether there is advantage to  
8 them or not. If there is advance information it must  
9 be general. It is the possible advantage that there  
10 might be to a small group of people through partial  
disclosure.

11 MR. THOM: Specific examples perhaps  
12 are helpful. Take the matter of purchasing loss  
13 companies, in which there may be abuses. The govern-  
14 ment had tried to fix the matter up a few years ago  
15 but they botched it. These are things which just  
16 happen occasionally, and one section of the public  
17 will just sweep away the underpinnings of the tax  
18 system because one group says that they are going to  
review the matter of loss companies.

19 This matter should be discussed by a  
20 committee, who could ask commercial groups to  
21 express opinions on the matter of the legislation  
22 which could be drafted so as to work properly. There  
23 has been a mass of jurisprudence thrown to the  
24 courts as to what the business is about, but there  
25 is still considerable uncertainty. That is the whole  
26 clue to the section of the act, that it is drafted  
27 in such a way that can be understood. It is not  
28 simple and clear. It appears in the act, and then  
29 two or three weeks later the act becomes law. That is  
30







1  
2 the specific kind of thing which comes to mind.  
3 This could be dealt with in a more orderly way  
4 over a seven-month period, with the hope that this  
5 question of purchase of loss companies can be dealt  
6 with on the basis that the public will understand  
7 and would be prepared to go along with.

8 THE CHAIRMAN: Let me just see if I  
9 understand your proposal. Have we got to this stage  
10 yet, Mr. Coyne?

11 MR. COYNE: We were certainly leading  
12 into it, Mr. Chairman, because the next page details  
13 what is suggested in relation to the tax information.

14 THE CHAIRMAN: Then it seems to me  
15 that our discussion might be improved if we see  
16 what is precisely the recommendation.

17 MR. COYNE: I think we are at that  
18 point now. Shall I proceed, Mr. Chairman?

19 THE CHAIRMAN: Yes.

20 MR. COYNE: Well, since we have already  
21 launched into this discussion, is not one of the  
22 problems as to when you are proposing that this  
23 discussion should take place? If the problem is  
24 merely that after the Minister has revealed his  
25 intentions in his budget speech there is at various  
26 stages along the route insufficient time and  
27 opportunity of encouragement of discussion, then  
28 presumably that could be rectified without any  
29 significant alterations of political procedures. Is  
30 that what you have in mind, or do you have in mind  
the consideration of government policy in the tax





1  
2 field by outside parties before the Minister has  
3 declared his intentions in his budget? Because if  
4 that is the intention, then I would suggest to you  
5 that we are getting into the whole realm of  
6 ministerial responsibility, and indeed it raises the  
7 whole question of our system of responsible govern-  
8 ment.

9 MR. THOM: It used to be understood that  
10 the tax bill always appeared about two days before  
11 parliament prorogued. We have moved on a little  
12 from that now, and there is now an effort to give the  
13 public time to consider bill changes. We are not  
14 talking so much of budget resolutions alone. There  
15 are probably 20 sections to the act, and only five of  
16 them cover the budget, the rest of them relating to  
17 other things.

18 THE CHAIRMAN: I think there are three  
19 areas for consideration here. One is the period  
20 before the budget. Another is the period after the  
21 budget but before the bill is prepared. And the  
22 third is after the bill appears. Mr. Coyne says:  
23 do you wish to be able to do something about the  
24 budget before the Minister has brought down or declared  
25 his intentions in his budget speech, or do you wish  
26 to wait until after that?

27 MR. COYNE: I suggest to you that  
28 there are important political and constitutional  
29 distinctions in the different periods.

30 MR. HULBIG: That is true, but I wonder  
whether our question is not too categorical. Perhaps







1  
2 we could approach it from the other direction. In  
3 the process of proposing amendments, what we are  
4 basically asking for is some continuous bearing down  
5 of intelligence upon the whole problem, and all the  
6 specific problems -- I do not say all of them, but  
7 a number of the specific problems -- which come up  
8 from time to time. As we understand it, and as we have  
9 pointed out, the bodies who are the gentlemen charged  
10 with making recommendations all have other jobs, and  
11 they literally do not have enough time. But they  
12 recognize their problem the same as we do.

13 We would suggest that in the study of  
14 this process prior to, during, and after, if you will,  
15 the budget, that there be a special body to which  
16 reference could be made.

17 Now, I do not think that we can tie  
18 down the Minister and say that he must divulge his  
19 policy changes, or his proposed policy changes, before  
20 they are announced in the budget. That is not our  
21 idea at all. Do you agree, Keith?

22 MR. EATON: Yes.

23 MR. HULBIG: On the other hand, there  
24 may be specific studies which are assisting him in  
25 coming to a conclusion which could very well be  
26 given to such a committee. The committee could ask  
27 the opinion of qualified people and make known to the  
28 public that they are studying a certain area, without  
29 being specific.

30 MR. COYNE: To some extent this is  
done on an ad hoc basis now, is it not, Mr. Hulbig?





1  
2 MR. HULBIG: Yes, ad hoc; exactly.

3 MR. COYNE: I take it, from that aspect  
4 of your remarks, that in a sense it is sort of a  
5 continuing forum in the nature of a royal commission,  
6 a body continuing in office, which is always available  
7 to examine into the subject at the request of the  
8 Minister, or of its own motion.

9 MR. HULBIG: Both.

10 THE CHAIRMAN: And you suggest public  
11 hearings, I observe. I am rather curious to know  
12 whether you mean public hearings in anticipation of  
13 the budget, or whether you mean after the budget, or  
14 both?

15 MR. THOM: Let us take the specific  
16 case of personal corporations. The law regarding  
17 personal corporations is just as much a hodge-potch  
18 now as it was five years ago. There was an effort  
19 a couple of years ago to do something about it. The  
20 issue was discussed but there were so many objections  
21 to it that it was eventually withdrawn.

22 Now, where is the matter today? None  
23 of us know what to do with personal corporations.  
24 Is the matter being worked on, or is anyone thinking  
25 about it? Will they appear on another section of the  
26 bill next year and say: "Is not this the sort of  
27 thing which should be the subject of a departmental  
28 review committee?"

29 MR. EATON: Going back to Mr. Coyne's  
30 question, I think it would clarify the matter if we  
looked at it in this way. The review committee could







1  
2 be periodically reviewing ideas, if you like, or  
3 plans or schemes for improving the legislation, but  
4 they would not in that area have a draft bill, or  
5 even a draft section probably, being circulated. That  
6 is one idea which is quite distinct from the other,  
7 which is an opportunity to review and consider the  
8 detailed wording of the proposal.

9 The way in which we express this aspect  
10 of the matter is set out at the top of page 12 of  
11 the brief, under heading (3). Perhaps it is not too  
12 clearly stated, but we said there:

13 "(3) Publication of all legislative  
14 proposals concerning taxes,  
15 following Cabinet approval,  
16 except those which, in the  
17 opinion of the Minister of  
18 Finance, require secrecy."

19 I do not think we have necessarily in  
20 mind waiting until the budget speech for that. In  
21 certain cases the Minister might see fit, following  
22 Cabinet approval, to make a public release of a  
23 proposed amendment particularly of a non-budget type,  
24 and then you do have in effect detailed wording.  
25 At that stage the committee is considering the first  
26 step in the legislative process.

27 That is quite different from the earlier  
28 one.

29 MR. COYNE: Yes, I agree, but might I  
30 just interrupt you there with this question. As  
far as that particular problem is concerned, would it





1  
2 not be far more appropriate to have that sort of  
3 discussion take place in a parliamentary committee?  
4 I think perhaps of some sort of permanent committee  
5 of the House of Commons or the Senate, who, after all,  
6 are going to have to take the responsibility for the  
7 legislation in its final form. Would not discussions  
8 by your committee be either duplication, or really a  
9 usurpation of what is necessarily a parliamentary  
10 task?

11 MR. EATON: This point was discussed  
12 and considered at considerable length within our  
13 committee. We discussed the advisability of the last  
14 suggestion which you made for a combination of the  
15 two committees, or what we have ended up with. After  
16 considerable discussion and polling of views, we  
17 decided that this would be the most effective way of  
18 meeting the problem, although I believe we did not  
19 have a previous draft of the brief, or the paragraph  
20 in it which says that there be a parliamentary committee  
21 as well as our committee which would have the chance  
22 to review it at a later stage. But that was the  
23 net result of our discussions, and I think that we  
24 were influenced to some extent by experience in the  
25 United States, and their congressional committees.

26 MR. EDWARDS: One point in connection  
27 with the parliamentary committee is that presumably  
28 it would sit only while Parliament was in session,  
29 and would probably not be permanent. The personnel  
30 would be more likely to change from time to time.  
Whereas the type of committee which we suggest would be







1  
2 full time body and would not be subject to change  
3 unless someone either resigned or died.

4 MR. COYNE: I was not really thinking  
5 or suggesting or proposing that the parliamentary  
6 committee replace your committee for all purposes.  
7 I was dealing specifically with Mr. Eaton's reference  
8 to your paragraph (3) and the appropriate body to  
9 consider legislative proposals already approved.  
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2 Presumably those would only be forthcoming at a  
3 time when parliament was sitting.

4 MR. EATON: We wonder if this is  
5 necessarily so. Perhaps there is some constitutional  
6 necessity for it, but it seemed to us that you must  
7 have certain parts of amendments where, following  
8 cabinet approval, they could be published before  
9 the parliamentary process as such starts to operate.  
10 This could be done when parliament is not in  
11 session. This would give a little more time  
12 for the new body to handle the matter before it  
got to the parliamentary stage.

13 MR. THOM: It is not for us to say so,  
14 but we thought perhaps the activities of the  
15 department or review committee would be of great  
16 interest to the parliamentary committee, which  
17 undoubtedly does exist. Now there is no such  
depth of background to tax amending legislation.

18 COMMISSIONER GRANT: It is a strange  
19 thing to me that the rules in the House of Commons  
20 do not provide for a committee to look into the  
21 income or taxing statute, and any changes and  
22 amendments and so on that have been put forward  
23 arising out of a budget. They have singularly  
24 steered clear of setting up such a committee, in  
25 their wisdom. The only committee that is available  
26 as I understand it, is the Senate Committee on  
27 Banking, and that is after the bills have been  
28 debated and passed the house, and have then reached  
29 the Senate. We saw evidence of that in the last  
30 budget. I do not think that Senate committee actually







1  
2 meets with any degree of regularity. It has met  
3 on call when there has been need for it.

4 The provincial legislatures, or the  
5 one with which I am reasonably familiar, has a  
6 law amendments committee to which an act, such  
7 as an amendment to the Income Tax Act after it  
8 was introduced in the house and before debates --  
9 I believe I am correct in saying that -- would  
10 be referred to it. Any interested body or  
11 individual has every right to appear before the  
12 committee and the bill will not be referred back  
13 before the legislature until the committee has  
14 heard all the evidence that it wishes to hear.

15 In so far as change of rates are  
16 concerned, I should think it would have to be  
17 approached in the way that the government, when  
18 it announced a change of rate through the budget  
19 speech, is committed to its announcement. But  
20 again, we have seen evidence in the last number  
21 of months where it has changed its original  
22 intention. So that is not sacrosanct in itself.  
23 If there could be a system set up whereby the  
24 interested parties could appear before a committee  
25 of the House of Commons, whereby their views would  
26 be known after the budget resolutions were debated  
27 but before the bills became law in the House, or  
28 passed the House of Commons, might that not in  
29 itself go a long way toward giving the public  
30 an opportunity to make itself heard?

MR. HULBIG: It would certainly go some  
way, sir; there is no question about that. What  
we are also trying to get at is a continuous process





1  
2 of study.

3 COMMISSIONER GRANT: I understand that,  
4 but that could be another thing altogether.

5 MR. HULBIG: True.

6 COMMISSIONER GRANT: They both could  
7 work very nicely together.

8 MR. EDWARDS: We are certainly not  
9 opposed to a parliamentary committee. As Mr.  
10 Eaton said, in one draft we did have that pro-  
11 posal in our brief. We removed it; not because  
12 we were opposed to it but because we were not  
13 sure about it. It might well work well with  
14 another committee.

15 THE CHAIRMAN: You do not consider  
16 it as a substitute?

17 MR. EATON: No.

18 MR. HULBIG: No.

19 MR. LEMAY: One of the advantages of  
20 this committee would be that it would certainly  
21 help to obtain clarity of language.

22 THE CHAIRMAN: Which committee?

23 MR. LEMAY: The special tax review  
24 committee at page 11. If civil servants who  
25 specialize in that field have time to scrutinize  
26 the various proposals, certainly they could come  
27 up with simplified language in many cases where  
28 actually it is cumbersome and long.

29 MR. HULBIG: There is certainly a better  
30 chance of it.

COMMISSIONER PERRY: In the Commons, tax  
legislation does go before a committee. It is a





1  
2 Committee of the Whole House on the principle that  
3 this is a matter of such importance it should not  
4 be referred to a subcommittee.

5 COMMISSIONER GRANT: But the difficulty  
6 there is that the public cannot be heard when it  
7 is a Committee of the Whole House.

8 COMMISSIONER PERRY: Perhaps that was  
9 the intention.

10 MR. COYNE: I would like to go back  
11 for a moment to an answer which came either from  
12 Mr. Thom or Mr. Eaton. I asked you a question as  
13 to how the matters to be dealt with by the committee  
14 were to be initiated, whether by the minister or  
15 by the committee as its own motion. You said both,  
16 which I took to mean that you saw no distinction.  
17 Would you comment on this?

18 I can see the situation where the  
19 minister would refer the matter to a committee  
20 for investigation and report, in which event the  
21 committee would properly hold meetings to get  
22 recommendations in much the same way as at a  
23 royal commission. But I put to you that it would  
24 be very questionable that a committee of this  
25 kind of its own motion would dream up something  
26 itself that was worth investigating and then have  
27 public hearings and carry on an investigation into  
28 some matter <sup>in</sup> which the government or parliament  
29 might not have any eventual interest at all and  
30 could be seriously embarrassing to the government.  
I see no objection to the committee undertaking private  
studies of its own motion, but I suggest for it to







1  
2 have public hearings would be a very startling  
3 departure from our accepted procedures.

4 MR. EATON: I do not think we were  
5 thinking so much of the committee dreaming up  
6 itself areas of investigation as we were the idea  
7 that the committee would, in response to repre-  
8 sentations by representative groups such as the  
9 Canadian Bar Association, and others, who have  
10 asked for a particular area to be reviewed, in  
11 response to this sort of request deciding that  
12 this is something that should be reviewed and  
going ahead and reviewing it.

13 No doubt they would ask for the permission  
14 of the minister under whom they are functioning  
15 before they did it. However, I do not see that  
16 as a practicable matter there would be any serious  
17 difficulty at all. All I am suggesting is that  
18 it should not be left always to the minister to  
start the ball rolling.

19 MR. COYNE: But I would have thought it  
20 was very important in the specific example you  
21 mention that the request should go to the minister,  
22 or someone responsible in the field, and not  
23 simply to a committee of civil servants. The  
24 minister could then use the facilities of the  
25 committee, and indeed direct the committee to  
26 make its investigation and to report, but would it  
27 not be inappropriate for the committee to really be  
acting irresponsibly, I suggest, in political terms?

28 MR. EATON: I do not think this is a  
29 matter we have discussed, but speaking for myself  
30





1  
2 I do not think there is any practical problem. I  
3 think everything you have said is correct as far  
4 as the propriety of the procedure is concerned,  
5 but as a practical matter I think it would end  
6 up with groups approaching the committee and making  
7 known their desires for investigation and hearing,  
8 and then the committee passing it on to the minister.  
9 But the ultimate responsibility certainly for any  
10 public hearing and investigation would have to be  
11 started by the minister.

12 MR. THOM: Undoubtedly. And I do  
13 not doubt that, from time to time on an ad hoc basis,  
14 such a group now exists within the government  
15 departments. There must be this, surely. It  
16 is merely putting it on a more formal basis and  
17 permitting the public to have some contact with  
18 it which we think would be of advantage to the  
19 government, in our humble submission.

20 THE CHAIRMAN: A great number of sub-  
21 missions which would end with the minister would,  
22 on your proposal, pass over to this group and he  
23 would say, "Please report on this matter." They  
24 would hold public hearings and invite people to  
25 make submissions, and come and speak to them. At  
26 least, I think that is your proposal.

27 MR. EATON: Yes.

28 THE CHAIRMAN: Then finally this group,  
29 having heard whatever was forthcoming, would then  
30 report to the minister on what they had heard, and,  
in addition to that, if there were certain areas  
for exploration, the minister might say to them --  
and I think he would only say it publicly, and I







1  
2 do not know how he would go about this -- that there  
3 is this complex area and I would like this group  
4 to explore it, and I would like anyone who has any-  
5 thing to say on this difficult area to make repre-  
6 sentations. Is that what you had in mind?

7 MR. THOM: Yes.

8 COMMISSIONER PERRY: As Mr. Thom said,  
9 this largely formalizes a process which now goes on.  
10 I do not think this is entirely advantageous; I can  
11 see some difficulties.

12 MR. EDWARDS: The advantage we see is  
13 that it would be a full time, continuing process.  
14 I think now the system is not on a full time basis  
15 for any particular group.

16 COMMISSIONER PERRY: This is what I do  
17 not see. At the moment it is done by the operative  
18 officer whose word is largely accepted and whose  
19 conclusions are largely based on practical  
20 experience and thought. You are suggesting his  
21 practical experience be discarded?

22 MR. EDWARDS: No.

23 MR. THOM: Quite a few people have spent  
24 quite a lot of time drafting the two or three pages  
25 of nonsense that are drawn up. It is a waste of  
26 someone's time and the situation is as bad as ever.

27 THE CHAIRMAN: You think if it had been  
28 exposed in the manner you suggest that there might  
29 have been a better solution?

30 MR. THOM: I suggest there might have  
been a solution.

COMMISSIONER PERRY: It is an awful





1  
2 assumption.

3 MR. THOM: It is an awful assumption,  
4 but as it is we are just right back to where we  
5 were before.

6 MR. COYNE: I take it you see no objection  
7 to a committee of civil servants performing the  
8 public functions rather than an independent board?

9 MR. THOM: This is our suggestion.

10 MR. COYNE: This is your suggestion, I  
11 know, but it is a very startling one in terms of  
12 our present constitutional habits.

13 MR. EATON: This was an area of great  
14 discussion in the committee, and probably the reason  
15 the ultimate recommendation was put in the way it  
16 is is because it represents something of a com-  
17 promise of ideas within the group, because there  
18 were various different ideas expressed.

19 I think this area is deserving of further  
20 discussion here because it was certainly not our  
21 intention to preclude in any way having people  
22 on this new committee who have had a great deal  
23 of experience in the present process. That is  
24 why I was a little alarmed at Mr. Perry's question.

25 The big problem in connection with  
26 establishing this committee is recruiting the  
27 personnel, and there are obvious dangers. If  
28 people are put on there as a political reward or  
29 as a departmental promotion to kick them upstairs,  
30 so to speak, is it going to be just worthless?

The final conclusion reached was that  
the best way of minimizing the risk, if you like,





1  
2 and achieving the object would be to draw on civil  
3 service personnel who have had the experience and  
4 who would be best qualified and best interested to  
5 keep it up, because a lot of work we envisage will  
6 really be left to the initiative of the members of  
7 the committee themselves to make sure it works.  
8 I might also add that I have reason to believe  
9 that the people presently involved in the process  
10 we are discussing looked with favour upon something  
11 along the lines we are recommending, which may be  
12 nothing more than an expansion of the present  
13 set-up, by increased personnel, which will give  
14 increased time to the key individuals involved.  
15 Added to that, I think we have in mind the possibility  
16 of a measure of independence from the three  
17 departments primarily concerned with the process,  
18 just from a point of view of adding a little  
19 objectivity to the whole work that they are going  
20 to carry out, perhaps in physical separation. They  
21 would be working together in a separate building,  
22 and not just an interdepartmental committee that  
23 meets when they have a Friday afternoon free.

24 THE CHAIRMAN: Mr. Coyne, going to the  
25 next phase of this -- if that is what you proposed  
26 to do -- after the budget is brought down, which  
27 I would consider the next thing, do these gentlemen  
28 anticipate this group would then gather together  
29 and hear complaints about the budget and hear  
30 suggestions as to the minister changing his ideas  
before he brings down the bills?

MR. THOM: I really think their work would







1  
2 have been done before the budget was brought down.

3 THE CHAIRMAN: I would have thought so,  
4 but I would have thought they would have come  
5 together at such time as the bill is available  
6 to meet people such as a joint committee of the  
7 bar and accountants.

8 MR. THOM: We do not put this forward  
9 as a usurpation of the rights of parliament. The  
10 parliamentary committee must finally take the  
11 responsibility. It might be noted that a  
12 lot of tax legislation in the form of regulations  
13 never sees a parliamentary committee now. Take  
14 the history of the depletion legislation where  
15 the government kept providing regulation after regu-  
16 lation after a series of disastrous cases until  
17 the government finally got what it wanted; it  
18 involved millions of dollars.

19 MR. EATON: The meeting after the budget  
20 by the committee would be perhaps of a post mortem  
21 nature, but it still should be held.

22 THE CHAIRMAN: What do you mean by  
23 "after the budget"? Do you mean before the bills  
24 or after the bills?

25 MR. EATON: I want to step back a stage,  
26 if I may. If before there is any specific  
27 recommendation for amendment there has been a  
28 consideration by the committee in the particular  
29 area that is under consideration, say personal  
30 corporation, they have already had a lot of repre-  
sentations and digested a lot of views, then if  
following that, pursuant to the recommendation at





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the top of page 12 of our brief, there is publication following cabinet approval, and before any announcement in the house, then the committee has another chance to look at the specific amendment.







1 Then when the actual budget resolution is introduced  
2 it will largely contain this work and then what would  
3 happen after that would be what I referred to a moment  
4 ago a sort of post mortem meeting. There would be no  
5 objection to a public meeting with the joint committee  
6 of accountants and lawyers to sort of see what has  
7 happened and discuss it.

8 THE CHAIRMAN: They would be introduced in  
9 session with the other bills, would they not, much as  
10 they are now?

11 MR. EATON: Yes, very much so. Policy at that  
12 time would be pretty well crystallized.

13 THE CHAIRMAN: I cannot see any purpose of  
14 a public meeting. We are concerned with those who are  
15 drafting them.

16 MR. EATON: That is correct.

17 MR. EDWARDS: One point in connection with  
18 this, I think there should be close collaboration between  
19 those doing the drafting and those formulating policy  
20 because sometimes if you set down policy and you go to  
21 draft the legislation you find that there are problems  
22 that the people formulating policy did not appreciate.  
23 In other words it seems to be all one process and that  
24 policy is necessarily bound up with the drafting problems.  
25 This may be responsible for many of our present  
26 problems that someone determines policy and gives it to  
27 someone in another Department to draft. He is faced  
28 with a very difficult policy to put into effective  
29 legislative form.

30 MR. EATON: I think specifically we had in





1 mind a person with drafting experience on this committee  
2 would be very helpful.

3 MR. COYNE: You contemplate the Committee  
4 would take some part in the drafting process before  
5 the bill -- I am thinking of drafting in the limited  
6 sense -- the actual production of the proposed  
7 legislative provisions.

8 MR. EATON: Yes, very much so and they would  
9 play a dominant part in our view.

10 MR. COYNE: It would not then simply be a  
11 question of a committee receiving a draft bill and  
12 being asked to improve it.

13 MR. EATON: No.

14 MR. COYNE: On the other hand, are they  
15 going to hold public hearings in connection with this  
16 drafting process or is this only going to be a matter of  
17 having the assistance of their experteese.

18 MR. EATON: I think they would have their  
19 public hearings first on policy.

20 MR. COYNE: On matters of policy.

21 MR. EATON: Yes. The drafting they would do  
22 privately.

23 MR. EDWARDS: There may be further hearings  
24 on the bill after it is drafted. I think drafting is  
25 something you have to do in a room with a closed door.

26 MR. COYNE: I wonder if at that stage when  
27 the bill has been drafted and published, is that not  
28 perhaps the stage where interest in the proceedings  
29 becomes paramount.

30 MR. EATON: Yes, I think that is right.





1 COMMISSIONER GRANT: Are you going to have  
2 public hearings on the draft, before the Minister has  
3 introduced any changes in his budget speech, is that  
4 what you are advocating?

5 MR. EATON: No, Mr. Grant.

6 COMMISSIONER GRANT: The hearings would come  
7 after the budget has been introduced but before the bill  
8 would be introduced.

9 THE CHAIRMAN: I thought you were proposing  
10 that if there was a hearing it would be pretty much the  
11 same procedure that you have now. Bills are introduced  
12 into the House and I think it is after the second  
13 reading, the accountants and lawyers come over and talk  
14 to the draftsman.

15 COMMISSIONER GRANT: You can only have a bill  
16 after it has been introduced in the House referred back  
17 to this committee because it is then out of the hands  
18 of this committee entirely. You would have to work in  
19 conjunction with a committee of the House for your  
20 hearing.

21 MR. EDWARDS: I am sure the Minister would  
22 undoubtedly call on the committee for assistance in  
23 drafting any amendments that are desirable.

24 COMMISSIONER GRANT: Purely unofficially. He  
25 can only recommend as an adjunct to the House.

26 MR. COYNE: Really, as I take it, this  
27 committee will have to have private and public functions,  
28 if you can take the term private function as applying  
29 to your direct relationships with the Minister, on the  
30 other problems of the government.







1 MR. EATON: Yes, I don't think there would be  
2 any objection, in our concept, to the committee  
3 continuing private in those cases where it deems fit in  
4 addition to any public hearing.

5 COMMISSIONER GRANT: The crux of the matter is  
6 that if you advocate the amendments should be subject  
7 to review before they are passed by the House, you can  
8 only achieve that idea, I suggest, through a parliamentary  
9 committee because this organization which you have in  
10 mind here has virtually discharged its function by the  
11 time the bills have been drafted.

12 MR. THOM: Yes, Mr. Chairman. It would have  
13 to be a continuing committee when it is the intention  
14 to impose tax legislation that is non-contentious in a  
15 political sense.

16 COMMISSIONER GRANT: And should shorten the  
17 length of time that would be required by a parliamentary  
18 committee to renew the bill.

19 MR. THOM: Yes, improve their capacity to  
20 understand. There would be a background session to  
21 which they could refer.

22 COMMISSIONER GRANT: The committee would be  
23 able to perform its function in much better shape.  
24 There would be less debate required on it when you got  
25 them before the parliamentary committee.

26 COMMISSIONER PERRY: I appreciate the purpose  
27 for a lot of what has been said. One very deep misgiving  
28 I have is based on quite a few years experience in  
29 Ottawa which leads me to the conclusion that if you  
30 want to make an activity completely sterile you put





1 it in the hands of a committee who is advising the  
2 department. I am afraid your suggestion has this  
3 possibility.

4 MR. THOM: It could be.

5 MR. EATON: I think we all recognize that  
6 but we didn't feel that it necessarily has to be if  
7 the thing is organized. We believe if you have it  
8 organized you could avoid that danger.

9 COMMISSIONER PERRY: A lot would depend on  
10 getting the right people on the committee.

11 MR. THOM: Exactly. I think we all recognize  
12 historically cooperation between the tax paying public  
13 and the taxing authority is improving steadily all the  
14 time. It is being recognized as an informality which  
15 has now reached the point of being formalized.

16 COMMISSIONER PERRY: You also have to recognize  
17 Ministers can be persuaded where committees cannot, to  
18 do things in the taxpayer's favour.

19 MR. EDWARDS: Sometimes it is a bad thing and  
20 results in a lot of special exceptions.

21 THE CHAIRMAN: There have been a lot of errors  
22 created in other years on account of special privileges  
23 being granted.

24 Well now, is this a good time to pause? I  
25 think it would be if we are through this section. I  
26 think we will stand over for ten minutes.

27 ---A short recess.

28  
29 THE CHAIRMAN: Mr. Coyne, we are now moving  
30 to part 2, is that right?







1 MR. COYNE: Yes, Mr. Chairman, civil rights  
2 and imposition of tax, commencing at page 13.

3 MR. MERRIAM: Mr. Chairman, before you leave  
4 that I would like to make one comment apropos of the  
5 last section. There was a sort of suggestion or  
6 implication that possibly the Canadian Bar Association  
7 was recommending some sort of change or amendment or  
8 different approach to the well established and  
9 traditionally accepted principles of parliamentary  
10 supremacy and of legislative responsibility.

11 I think it should be very clearly understood  
12 that not only do we support that fully, we would be  
13 very disturbed by any suggestion it should be upset.

14 As we visualize the recommendation which we  
15 were discussing prior to the adjournment, it does not  
16 interfere or raise any sort of constitutional problem  
17 whatever.

18 We feel rather in our minds that the  
19 recommendation is beyond the constitutional sphere  
20 entirely.

21 If it could be examined in that light by the  
22 Commission I think possibly the recommendation might  
23 become somewhat clear.

24 THE CHAIRMAN: Thank you, Mr. Merriam. I think  
25 we have got that before but I am very glad that you  
26 stated that just as carefully as well as you have. We  
27 understand that.

28 MR. COYNE: In introducing this question on  
29 page 13 in Part 2, you state in the third paragraph:  
30 "If, however, powers are so broad or ill-defined as to





1 deprive taxpayers of their property without adequate  
2 recourse to the courts, to deprive them of adequate  
3 means of defending themselves, to inhibit by legitimate  
4 business transaction by needless threats, these powers  
5 should be carefully scrutinized in an attempt to bring  
6 about improvement."

7 I take it you are not suggesting in this  
8 paragraph that powers of this nature are generally  
9 characteristic of our present system? You are rather  
10 amplifying some of the pitfalls to be avoided and then  
11 going on to specific matters which you think should be  
12 attended to.

13 MR. HULBIG: That is right.

14 MR. COYNE: Well then on the subject of search  
15 and seizure, section 126-3 I would like to turn to page  
16 16 about two-thirds of the way down the page where  
17 you say:

18 "It would appear reasonable  
19 that the taxpayer had the right  
20 to apply to the Minister for the  
21 return of items seized; and that  
22 the provincial courts of original  
23 jurisdiction should be given  
24 power to decide the issue on motion  
25 of the taxpayer, if the Minister  
26 refuses. The Act already provides  
27 in section 126, (5) that a certified  
28 copy produced by the Minister is  
29 admissible as evidence with the  
30 same force as the original, so the





1 Minister could always have copies  
2 of any documents seized without  
3 prejudice to his case".

4 Is the problem here, as you see it, really the  
5 physical possession of the documents by the taxpayer or  
6 rather having copies of them so that he possesses the  
7 information as to what those documents contain?

8 MR. LEMAY: When search and seizure is made  
9 ordinarily documents, books and records are seized in-  
10 discriminately because at the time of the seizure, of  
11 course, the departmental officers cannot be called upon  
12 to pass judgment and determine if a particular document  
13 is to be used or not in court or if it is going to be  
14 used as a basis for an assessment, but not all the  
15 documents or books seized are necessary, more often  
16 than otherwise, for purposes of assessment.

17 That is one type of book or document that  
18 should be returned to the taxpayer. The Act does not  
19 make any distinction and just simply says that the  
20 Minister may be retain everything that is seized until  
21 it is produced or filed in court.

22 There is no remedy afforded to the taxpayer  
23 to ask for the return of, let us imagine, documents,  
24 books or records that are not necessary for purposes  
25 of assessment. That is one aspect of it.

26 Section 126 (5), inasmuch as it enables the  
27 Minister to use photo copies or certified copies of  
28 documents as original evidence should permit the  
29 taxpayer to obtain the return of the documents or books  
30 or records which are necessary for the carrying on of







1 his business. The brief does mention the fact that it  
2 may cause grave prejudice to the taxpayer not to have  
3 their records and books. I think that is evidence by  
4 itself.

5 MR. COYNE: The Combines Investigation Act  
6 deals with this problem in a somewhat similar context;  
7 that is there is very broad power of search and seizure  
8 by the director under the Combines Investigation Act  
9 but in contrast to the Income Tax Act the Combines  
10 Investigation Act does deal specifically with the  
11 problem that you raise. Subsection 4, section 10 of that  
12 Act says:

13 "Where any document is  
14 taken away under this section  
15 for examination or copying, the  
16 original or copy thereof shall be  
17 delivered to the custody from  
18 which the original came within  
19 40 days after taken away or within  
20 such later time as may be directed  
21 by the Commission for cause or  
22 agreed to by the person from whom  
23 it was obtained."

24 Would a provision along those lines meet  
25 certainly the second aspect of the problem to which you  
26 have referred?

27 MR. LEMAY: It seems so.

28 MR. COYNE: There seems no reason why they  
29 can do it in one Act and not in another.

30 MR. LEMAY: Of course, in the interests of all





1 parties delay should be made as short as possible to  
2 carry out that operation.

3 MR. COYNE: Forty days seems a little long to  
4 make a photographic copy of a document.

5 MR. LEMAY: Yes.

6 MR. COYNE: Turning to your specific  
7 recommendation in this section on page 17 you recommend  
8 that the Act be amended provided there is approval of  
9 the judge in section 126 (3) and I am looking down to  
10 the sub-paragraph c: "Be made subject to judicial  
11 review".

12 I wonder if you could perhaps expand a bit  
13 on what you mean by these general words or perhaps  
14 indicate what you have in mind as to the extent of the  
15 judicial review in your submission? Should review  
16 extend to the fact of seizure itself or only to the  
17 steps taken under it.

18 MR. EATON: I think this recommendation is  
19 specifically directed to the approval of the judge, not  
20 what is done after his approval is given. The  
21 present state of the law is that there is no right of  
22 review. An attempt was made a few years ago to apply  
23 to a second judge to review the Order made by the  
24 first judge as to whether it was supported by the  
25 material that was placed before him. The second judge  
26 held that he had no authority to look into the matter  
27 at all because the first judge was persona designata and  
28 it was functus officio and so on, so I think what  
29 we are asking for is that this situation be corrected  
30 so there may be a review of the approval.







1 I think what we are asking for is that this situation  
2 be corrected so that there can be a review of the  
3 approval to see whether it is based on material which  
4 supports it, and whether all the procedural requirements  
5 have been properly met. For example, it was suggested  
6 to me at one time that under the present setup it would  
7 be quite possible for an officer of the Department of  
8 National Revenue to get approval from an Exchequer Court  
9 Judge over the telephone, and that there would be no  
10 way of inquiring into those circumstances, and I think  
11 that that is correct.

12 MR. COYNE: I suppose that the granting of  
13 an approval on an ex parte application would have to  
14 be retained, but what there should be, in your  
15 submission, is an opportunity to go back to a judge  
16 and challenge the validity, if you like, of the seizure  
17 in terms of material that is filed.

18 MR. EATON: That is correct.

19 MR. LEMAY: For instance, there should be  
20 reasonable ground to justify the issuance of such a  
21 seizure order.

22 MR. COYNE: Applying the standards which are  
23 applied under the Criminal Code.

24 MR. LEMAY: Yes, or in civil matters. If  
25 there is no reasonable ground, why should there be a  
26 seizure?

27 MR. EATON: It would have to be in the  
28 discretion of the review judge as to whether he is  
29 prepared to admit, say, cross-examination on affidavit,  
30 on which approval was given, or not. That is a matter





1 which we could expect to have spelled out in the  
2 statute. But as long as the right of review is  
3 provided I think we can leave it to the reviewing judge  
4 to determine the extent of the review which he will  
5 permit.

6 MR. COYNE: Then turning to page 18, I just  
7 note that in sub-paragraph 4 you are suggesting that  
8 section 126A be expanded to apply to documents in the  
9 hands of any taxpayer, so that a taxpayer can claim the  
10 solicitor-client privilege as well as the lawyer. I  
11 suppose that that is always a matter of inadvertence  
12 that that is not in there at the moment. Is that your  
13 view? Obviously, if a document is privileged, it should  
14 not matter where it is found, whether it is found in  
15 the lawyer's office or in the client's office.

16 MR. EATON: I do not think it is inadvertence.  
17 I had something to do with the preparation of the  
18 provisions in there now. I think it was really designed  
19 as a protection for solicitors, and apparently that  
20 is all it does do.

21 MR. COYNE: Protection for solicitors really  
22 for their own benefit, not for their client's benefit.

23 MR. EATON: Not for their benefit but for the  
24 protection of their offices and documents in their  
25 possession.

26 MR. COYNE: But you are now suggesting that  
27 it should be expanded to cover documents enjoying a  
28 similar privilege which are in the possession of the  
29 client.

30 MR. EATON: Yes. We think that that is only





1 a logical and consistent rounding out of the provision.

2 MR. EDWARDS: Prior to the enactment of  
3 section 126A, I think there were some cases where the  
4 Department demanded documents from officers of solicitors  
5 but were refused on grounds of privilege. Mr. Eaton  
6 knows more about this than I do, obviously, but this  
7 may have been an attempt to deal with that type of  
8 situation. As far as we can see, the one case is  
9 equally deserving as the other. If the documents are  
10 privileged, then they should not be subject to seizure  
11 no matter whose hands they are in.

12 MR. EATON: I think that what actually  
13 prompted this amendment were instances where solicitors  
14 whose own affairs were being investigated said that  
15 they would not produce accounts because the copies of  
16 their accounts were in client files and there was  
17 solicitor and client protection.

18 MR. COYNE: That is the sort of recollection  
19 which I have of the background of it.

20 Now, there is another small point. The  
21 succeeding paragraph in the recommendation, paragraph  
22 5 and 6, say this. Paragraph 5 says that:

23 "The taxpayer be given in  
24 any event the right at any time to  
25 have copies made of any items  
26 seized."

27 Paragraph 6 says:

28 "The taxpayer be given the  
29 right to reasonable access to  
30 that which has been seized".







1 My question is this. Are both these rights  
2 necessary? If he has the right to have copies, does  
3 he also require a formal statutory right of access?

4 MR. LEMAY: Yes, he does. Because in order  
5 to assure, let us say, a proper defence for a taxpayer,  
6 his solicitor must undoubtedly verify the existence or  
7 non-existence of what would be brought into court as  
8 evidence, and to choose from that evidence the  
9 documents which it is felt are necessary, copies of  
10 which should be made. Actually, this access to  
11 documents is limited to the goodwill of the district  
12 officers, and yet documents cannot be examined with  
13 such privacy that the Department will ignore what  
14 documents have been examined in fact. We do not mind  
15 the fact that there may be an officer of the  
16 Department making sure that no papers are taken away  
17 and that the whole thing be done in the presence or  
18 in the view, let us say, of an officer. But what we  
19 do mind is that there should be somebody looking over  
20 your shoulder seeing the note that you are taking.  
21 When we talk of reasonable access we also mean  
22 privacy of this kind.

23 COMMISSIONER BEAUVAIS: But surely, if some  
24 accounting books are seized, it might be rather  
25 difficult to have copies made of those accounting books.  
26 I understand very well the taxpayer being given the  
27 right of access to those books, but the right to have  
28 copies made of them I do not think would be feasible.

29 MR. LEMAY: Anything can be photocopied.

30 COMMISSIONER BEAUVAIS: Yes. But if you have





1 accounting books for a five year period, and so forth,  
2 that would be quite a job.

3 MR. LEMAY: But if there has been a search  
4 and seizure, and at the first point you have been given  
5 occasion to air the grounds and the basis of the  
6 seizure, you know the limitation and the scope of the  
7 accusation and you can work on that. It is easy to  
8 have copies made of relevant documents, or parts of  
9 books, at the time.

10 COMMISSIONER BEAUVAIS: Yes. But nevertheless  
11 your suggestion in 5 is that you would have the right  
12 to have all those books photocopied.

13 MR. LEMAY: Well, it may become impractical  
14 sometimes, but other times it might be practical to  
15 have copies, let us say, made of five sheets of one  
16 document, whereas you would need only one sheet of a  
17 book. That could be done so as not to disclose  
18 exactly your way of thinking with regard to the defence  
19 which you were preparing for your client.

20 COMMISSIONER BEAUVAIS: You would have the  
21 right to have the whole set photocopied.

22 MR. LEMAY: Yes.

23 MR. COYNE: Have you given any thought to who  
24 pays for the cost of the copying?

25 MR. EATON: Her Majesty.

26 MR. COYNE: Her Majesty. Is that your answer?

27 MR. EATON: Yes. May I just add by way of  
28 a general observation with regard to copying and  
29 returning that it seems that if there is any question  
30 about who should have the originals or who should produce







1 the copies, if you have reached the situation where you  
2 have to make a decision I think we feel that it should  
3 always be the taxpayer who has the original and has  
4 the benefit of it. Afterall, the whole scheme is a  
5 pretty serious intrusion on private rights of the  
6 individual, and if the purposes of the statute can be  
7 accomplished by having copies made, then surely the  
8 invasion of privacy should be minimized by returning the  
9 originals to the taxpayer at the earliest possible  
10 opportunity.

11 MR. EDWARDS: I think as a practical matter  
12 that part of the cost of the copying process can be  
13 cut down by having the Minister's representative and  
14 the taxpayer's representative get together. If the  
15 Minister decides that he does not want certain documents  
16 he can return them. If the taxpayer decides that he  
17 does not require copies, he can waive the right to  
18 have copies of certain documents. But we think that  
19 he should certainly have the right to the copies when  
20 they are seized and retained by the Department.

21 THE CHAIRMAN: Why should he waive anything  
22 at all if the Queen is going to pay for it? He would  
23 simply say: "I will have copies of everything you have".

24 MR. EDWARDS: He might well do that.

25 MR. EATON: He might find it to his own  
26 advantage to be friendly!

27 MR. COYNE: Then passing on to the next ---

28 COMMISSIONER GRANT: Before passing on, might  
29 I make the comment that if there is a serious field of  
30 abuse now in existence, then of course every step should





1 be taken to eliminate it. On the other hand, when an  
2 application is provided to the courts, or a method is  
3 provided to apply to the court in the course of a  
4 hearing with regard to these matters, it does add to  
5 the costs and does constitute delay. Costs are  
6 becoming more and more a factor for the client in these  
7 matters, because no person can take time out and appear  
8 before a court without that time being paid for. But  
9 it is the client who eventually has to pay. If these  
10 are abuses they must be corrected, certainly. On the  
11 other hand, I do not think that we should lose sight  
12 of the fact that an application to the court does add  
13 to the costs and also constitutes delay.

14 MR. GOODMAN: Perhaps the answer to that is,  
15 afterall, that an application to the court is the  
16 client's application. He will decide whether he can  
17 afford it and whether he wants to brook this particular  
18 delay. The problem we face is that after a seizure --  
19 and goodness knows there are not very many -- documents  
20 can remain in the hands of the Department of National  
21 Revenue for several years without any communication of  
22 them from the Department. While no doubt the  
23 Department is preparing its case, the taxpayer and his  
24 advisers are completely in the dark, are without legal  
25 access to the documents which have been seized, except  
26 by the grace of the District Taxation Office, and they  
27 are handicapped in the preparation of their defence.  
28 In some cases they have no knowledge of the nature  
29 of the transactions which are alleged. In other cases  
30 there may have been no ground for the seizure in the





1 first place, and there is no way of contesting the  
2 seizure.

3 THE CHAIRMAN: I think that many of us know  
4 of instances of what you suggest where documents have  
5 been held up for a long time, documents which may  
6 include the taxpayer's books.

7 MR. HULBIG: And somebody else's.

8 MR. THOM: It is possible that if the taxpayer  
9 had any rights in this matter it would go forward at a  
10 better rate, because the taxpayer would be able to  
11 assert himself, which at the present time he cannot do.

12 MR. COYNE: On the next section having to do  
13 with the right to be represented by counsel and to have  
14 a transcript, which is the bottom of page 19, you say:

15 "With the powers of investigation  
16 the Minister has, it is not necessary  
17 that he have the right to exclude  
18 the taxpayer and his counsel from  
19 a formal inquiry into the taxpayer's  
20 affairs."

21 Then in your specific recommendation, No. 2,  
22 you recommend:

23 "That a transcript of the  
24 examination of a taxpayer be made  
25 available to him."

26 I was wondering whether you had intentionally  
27 limited this recommendation to a transcript of an  
28 examination of the taxpayer. Did you not have in  
29 mind that he should be entitled to a transcript of any  
30 proceedings relating to the investigation of his affairs?







1 MR. LEMAY: Definitely. All the evidence that  
2 is required.

3 MR. HULBIG: "An examination of the taxpayer's  
4 affairs" perhaps.

5 MR. LEMAY: No. It is the actual examination  
6 of the witnesses before the inquiry, or before the  
7 Commissioner.

8 MR. COYNE: A transcript of any evidence taken  
9 in the course of an investigation.

10 MR. GOODMAN: I may say that Mr. Coyne and  
11 I have personal knowledge of a situation which took place  
12 before the decision in Guay v. Lafleur in Ontario, where  
13 a client of mine was being examined under Section 126  
14 by an officer of the Department of National Revenue. I  
15 was present at that examination and requested a  
16 transcript of the examination, which was formally  
17 refused on application to the Deputy Minister.

18 MR. COYNE: And there was nothing which you  
19 could do about it, because you had no right to it.

20 MR. GOODMAN: Yes, although subsequently the  
21 Quebec court found that the taxpayer was entitled to  
22 such benefits.

23 MR. COYNE: In the next section, where you  
24 deal with limitation of prosecutions, you criticize the  
25 alternative provision in section 136(4), where the  
26 limitation is based on the day on which evidence has  
27 come to the knowledge of the Minister. You recommend,  
28 both with regard to this Act and the Excise Tax Act,  
29 that the limitation period be specific.

30 My question is simply whether the provision, as





1 it now stands -- that is, with the time running from the  
2 date of knowledge -- is really unreasonable. I have  
3 in mind what I think is the normal civil limitation  
4 provision, where time will run from the date that the  
5 right of action arises, or from the date when the  
6 plaintiff has knowledge of the right of action. Why  
7 is it so unreasonable to relate a limitation period of  
8 this kind to knowledge of the event giving rise to the  
9 action?

10 MR. LEMAY: More often than not prosecutions  
11 are taken after a search has been made of the premises  
12 of the taxpayer, after documents have been taken away  
13 and sometimes examined by the Department for so many  
14 years, and during so many years. If the search was  
15 warranted it is because the Department thought at the  
16 time, and should have had reasonable grounds for thinking,  
17 that a fraud had been committed. If the Department  
18 had that knowledge and let two or three years elapse  
19 before prosecuting in fact, the taxpayer would feel that  
20 even if the record or the file came to the Deputy  
21 Minister's desk, let us say two or three years after  
22 the search had been made, the Department or the Minister  
23 had in fact, through his officers, had that knowledge  
24 and the taxpayer should have been prosecuted within  
25 the strict period of one year from the date of that  
26 knowledge. If the taxpayer could prove that the  
27 Minister, through his officers, had knowledge of the  
28 offence, he should have the right to establish that  
29 in court. Actually, he is deprived of that right.

30 MR. COYNE: Your recommendation is simply to







1 eliminate this reference "from one year of knowledge"  
2 altogether, and to make it simply that the limitation  
3 period for prosecutions under this section would be a  
4 straight five years from the date of the offence?

5 THE CHAIRMAN: That is the recommendation.

6 MR. LEMAY: It would probably be simpler in  
7 application.

8 MR. EDWARDS: The reason for that is that  
9 there should be some finality to matters of this kind.  
10 In other words, if you did not have a limitation of that  
11 kind the prosecution might take place 15 or 20 years  
12 later. But certainly alternatively, and in particular,  
13 we object to the provision that the Minister's statement  
14 as to when it came to his knowledge is conclusive.  
15 At the very worst it should be a question of fact as to  
16 when it came to the knowledge of the departmental  
17 officials, not the Minister, and it should be a question  
18 of fact, not an inconclusive presumption.

19 MR. COYNE: Would the fact that the Minister  
20 has ample powers, in situations of this kind, to  
21 collect the tax and impose penalties, quite independent  
22 of any right of prosecution, affect your views in this  
23 regard? If there has been a fraud which would  
24 warrant a prosecution, he has very broad powers to  
25 impose the taxes and penalties evaded as a result of  
26 that fraud.

27 MR. EDWARDS: He would not be limited as far  
28 as assessment is concerned, but after a certain period  
29 of time has passed, I think the taxpayer should be  
30 freed from the consequences of something which he did





1 long ago.

2 THE CHAIRMAN: The five year period worries me  
3 a little, if I understand it correctly, and I may not.  
4 Do you mean that if no one discovers that a fraud has  
5 been committed within five years of the committal of  
6 that fraud there can be no charge laid?

7 MR. EDWARDS: Yes.

8 THE CHAIRMAN: It seems to me that that is  
9 too short. Afterall, we are dealing with fraud.  
10 Somebody has stolen money from the government. The  
11 ordinary prescription in debt cases is a longer period  
12 than that.

13 MR. GOODMAN: We are talking about criminal  
14 prosecutions. There are many provisions in the  
15 Criminal Code providing for limitations on matters which  
16 are at least as serious as this.

17 THE CHAIRMAN: But with a prescription period  
18 as early as this?

19 MR. GOODMAN: Yes.

20 MR. COYNE: Where you are suing for penalty  
21 there is a two year limitation in the Code. But  
22 presumably that would not be as serious an offence as  
23 that involved in a case of fraud under the Income Tax  
24 Act. But I do not know.

25 MR. GOODMAN: That is not the only one.

26 MR. COYNE: No, it is not the only one.

27 --

28 --

29 --

30





1  
2 MR. EDWARDS: It depends on the nature of  
3 the fraud under the Income Tax Act. As I think we  
4 mention... later, there may be prosecution under  
5 section 132.

6 MR. COYNE: With any limitation?

7 MR. EDWARDS: Mens rea.

8 MR. COYNE: Is it not always true that the  
9 limitation provided in section 136(4) does not apply  
10 to a prosecution upon indictment under section 132(2)  
11 where there appears to be no limitation period at all.

12 Section 132(2) says that:

13 ".... every person who is charged with  
14 an offence described by subsection (1)  
15 may at the election of the Attorney  
16 General be prosecuted upon indictment  
17 and if convicted is, in addition to  
18 any penalty otherwise provided, liable  
19 to imprisonment."

20 I do not think 136(4) would apply to that, would it?

21 MR. EATON: I think that is right, and I  
22 think there is authority on that point.

23 MR. COYNE: Turning for a moment in the  
24 same section to the question of Excise Tax Act, you  
25 mention the fact that failure to pay sales or excise  
26 tax is a criminal offence under section 53 of the  
27 Excise Tax Act. Does the committee have any views  
28 whether or not a provision of that kind is warranted?  
29 There is no similar provision in the Income Tax Act.  
30 The mere failure to pay taxes is not, as I understand  
it, a criminal offence under the Income Tax Act but  
it is at the moment under the Excise Tax Act.

MR. GOODMAN: That is quite correct, Mr.  
Coyne.







1  
2                   MR. COYNE: Do you have any views of  
3 the distinction that is drawn between the two  
4 statutes? Is it warranted?

5                   MR. GOODMAN: I have some very strong  
6 views on the matter which this committee has heard  
7 before in that connection.

8                   I believe the difference between the  
9 statutes is not warranted in any way. The Excise Tax  
10 Act attempts on the one hand to impose criminal  
11 penalties for non-payment of tax which would be appro-  
12 priate if tax which is collected was a trust fund  
13 which had to be remitted to the government if, as  
14 and when collected from the customer. On the other  
15 hand, non-collection from the customer does not entitle  
16 the taxpayer, the licensee, to any defence in a  
17 prosecution by the Crown for collection of tax. So  
18 the manufacturer, the licensee, is in the unenviable  
19 position that if he is unable to collect from his  
20 customer he is still liable, and criminally liable  
21 for payment of sales tax.

22                   It would not be unreasonable to provide  
23 either that moneys collected from customers must be  
24 segregated and held as trust funds and must be remitted  
25 under criminal sanction, or that there is an absolute  
26 civil obligation to make payment of tax whether or not  
27 you collect from your customer, but no criminal  
28 sanction should be applied. This attempt to ride both  
29 horses should not be continued. It is extremely  
30 onerous in bankruptcy matters. There have been  
numerous cases where persons have been convicted  
and imprisoned for failure to pay in circumstances  
where the bank has refused to honour a cheque and





1  
2 has called in its loan, and the manufacturer is now  
3 in the position that he has no funds with which to pay.

4 MR. COYNE: I take it from your first re--  
5 marks, Mr. Goodman, that these are your personal  
6 views but that the committee has not made any recom-  
7 mendation on this.

8 MR. GOODMAN: The recommendations which  
9 exist in this particular connection are contained on  
10 page 21 only.

11 THE CHAIRMAN: But what you are saying is  
12 that debtors are going to jail in fact.

13 MR. GOODMAN: Yes. There are a number of  
14 cases in which that has occurred. I had a pitiful  
15 case I recall within the past year where a woman who  
16 was operating a small manufacturing business on her  
17 own was convicted of failure to pay sales tax. She  
18 had collected the tax from her customers and put it  
19 in the bank. The bank called in its loan and she was  
20 unable to continue in business, and she was in fact  
21 imprisoned for a day until we were able to get the  
22 fine paid by relatives before she was released.

23 I think the situation with respect,  
24 gentlemen and Miss Milne, is intolerable.

25 COMMISSIONER GRANT: Is imprisonment for  
26 debt not a matter that is treated under property and  
27 civil rights by the provinces, and has each province  
28 not an act now that states that imprisonment for debt  
29 is no longer possible?

30 MR. GOODMAN: I believe each province has.  
However, this is imprisonment for failure to pay a  
penalty, which is imposed under the Excise Tax Act  
for failure to pay tax. Under the Excise Tax Act a







1  
2 penalty is imposed if one fails to pay one's tax,  
3 and that penalty is \$25 to \$1,000 plus the amount  
4 of tax that was not paid. The minister has given  
5 the right to require that the portion of the fine  
6 which is calculated by reference to the tax be  
7 remitted to the Crown on account of the tax. He can  
8 apply it that way if he wishes, but he is not re-  
9 quired to do so. But the Court of Appeal in Ontario,  
10 in the case of Re Fred Cohen made it quite clear that  
11 this was not a collection of a debt; this was a  
12 prosecution for a penalty.

13 COMMISSIONER GRANT: I know that sometimes  
14 they do that. A debtor does end up in jail, I know,  
15 but it is on the grounds of contempt of court possibly  
16 because he has failed to carry out a court order.

17 MR. GOODMAN: This is quite different  
18 from a contempt of court failure to answer a judgment  
19 summons.

20 THE CHAIRMAN: It is a breach of trust.

21 MR. GOODMAN: It is not necessarily a  
22 breach of trust because he may have committed no  
23 criminal act involving breach of trust. He may have  
24 failed to collect it from his customer because his  
25 customer refused to pay him or he may have collected  
26 and deposited his money in the bank account intending  
27 to issue the cheque, and the bank may have called in  
28 its loan. It is hard to see that that is a criminal  
29 breach of trust.

30 THE CHAIRMAN: I cannot understand why  
you could not "spring" this woman under the civil rights  
law.

MR. GOODMAN: I think it might have taken





1  
2 several weeks longer.

3 COMMISSIONER GRANT: Your point is that  
4 it should not have been necessary to spring her at  
5 all.

6 MR. GOODMAN: Exactly, Mr. Chairman.

7 MR. COYNE: In your comments on certificate  
8 judgment, in the next section you say, at the bottom  
9 of page 92:

10 "However, on many occasions certificates  
11 are registered under section 119 before  
12 assessment or simultaneously with assess-  
13 ment, thereby in effect committing the  
14 Crown in a disputed cause effectively to  
15 determine the question of liability  
16 against the taxpayer without affording  
17 him the opportunity of a fair trial."

18 I wonder if you could expound on what you mean there.  
19 My question is related to the fact that, at least to  
20 my understanding, the certificate can only cover taxes  
21 and/or penalties actually assessed, and whether or not  
22 the taxes are owing if the taxpayer goes through the  
23 normal appeal procedures will ultimately be determined  
24 by the court.

25 I am just curious about your statement  
26 that this effectively determines the question of  
27 liability without the taxpayer being afford an oppor-  
28 tunity to dispute it.

29 MR. GOODMAN: Briefly to answer this I  
30 can say the situation resembles that in which the  
dentist has removed the wrong tooth and when the  
patient complains the dentist is quite prepared  
to return it. We have seen a number of examples where







1  
2 the haste to collect the taxes has not been paralleled  
3 by suitable caution in the assessment procedure.

4 MR. COYNE: What are you suggesting is the  
5 remedy for this, Mr. Goodman, in your recommendation  
6 here? Certainly if taxes are assessed and a certi-  
7 ficate of judgment is immediately registered and goods  
8 are seized, presumably this is a matter of great in-  
9 convenience to the taxpayer, but you are not recom-  
10 mending that the certificate judgment procedure be  
11 repealed. You are still going to leave it in there,  
12 so it is not quite clear to me what you have in mind  
13 as the purpose of this recommendation.

14 MR. GOODMAN: Let me give you a simple  
15 example. We have seen cases where a certificate is  
16 registered in respect of something where the tax has  
17 been calculated in error. It is inconceivable that  
18 one cannot go to the court and require that the amount  
19 be reduced, apart entirely from any appeal procedure  
20 dealing with the assessment.

21 MR. COYNE: Is that not a matter which,  
22 if drawn to the attention of the authorities, will be  
23 rectified by the authorities?

24 MR. THOM: I think that can be answered in  
25 the negative. There are instances where the  
26 authorities, having taken this action, have chosen  
27 to stand on what they have done.

28 MR. COYNE: Even when there has been a  
29 clear error?

30 MR. THOM: Yes. My example is of a patent  
case. The answer is that you have to go through the  
appeal procedure, with rights of objection and so on,  
which of course is a very prolonged activity. We feel







1 at least the taxpayer should have the opportunity  
2 of making these applications. He runs the risk of  
3 costs if he is not right.

4 MR. COYNE: What power do you envisage  
5 the Exchequer Court having with respect to the certi-  
6 ficate that has been registered?

7 MR. THOM: To make a reduction.

8 MR. HULBIG: To set it aside or correct it.

9 MR. COYNE: On the basis that the debt has  
10 been improperly calculated? I think the certificate  
11 at the moment merely certifies that \$X are owing and  
12 the act provides that the minister is empowered to  
13 register a certificate to that effect which then takes  
14 on the functions of a judgment which can be realized  
15 upon.

16 MR. THOM: The court, I am sure, would not  
17 take unto itself the appeal jurisdiction in its formal  
18 complete sense, but where there are faults the courts  
19 should have the opportunity of removing this burden  
20 from the taxpayer whose assets at this point are tied  
21 up by writ. The writ follows the judgment. It is not  
22 the judgment itself, it is the succeeding writ that is  
23 the problem.

24 MR. EATON: An important aspect of the  
25 recommendation is that it is a summary procedure.  
26 There have been attempts to file certificates. I  
27 think in one judgment it was suggested, although not  
28 authoritatively decided, they might be attacked by a  
29 petition of right for a declaration, but this would  
30 be more cumbersome and a more lengthy procedure possibly  
than the ordinary appeal from assessment.

I think the biggest area of need for review  
comes under the heading of what is the amount payable.





1  
2 Section 119(1) allows the minister to certify an  
3 amount payable and at the present time whatever he  
4 certifies as the amount payable for all practicable  
5 purposes, is the amount payable regardless of clerical  
6 or any other kind of mistakes.

7 MR. COYNE: Is that accurate? Is the amount  
8 payable not of necessity the amount that has been  
9 assessed?

10 MR. EATON: I would have thought so except  
11 that is not the way in which the section has been  
12 interpreted and applied -- by the department at least.

13 MR. COYNE: Is it in fact the case that  
14 there is any power to register a certificate judgment  
15 prior to assessment?

16 MR. EATON: This is arguable. I think on  
17 the interpretation, but certainly a good many people,  
18 including people in the department, feel there is this  
19 power, in other words to have a departmental pre-  
20 assessment judgment.

21 MR. COYNE: Although there is no debt owing,  
22 as I read certain sections of the act, until an  
23 assessment has been made.

24 MR. GOODMAN: Oh, Mr. Coyne, certainly  
25 income tax is owing before assessment. The act makes  
26 that quite clear, quite clear.

27 MR. COYNE: And can the certificate relate  
28 to taxes that are owing before assessment?

29 MR. GOODMAN: I would think so because  
30 section 119 speaks of an amount payable under this  
act that has not been paid. It does not require  
assessment procedure for that.

MR. COYNE: As for example instalment







1  
2 payments prior to filing of a return?

3 MR. THOM: I think in practice what the  
4 department does is to put an assessment which can be  
5 quite fictitious, to use a hard word, and certainly  
6 specious. There is very little difference as far as  
7 the taxpayer is concerned.

8 MR. COYNE: Your point, taking it generally,  
9 is that there should be some opportunity by the tax-  
10 payer, by summary procedure, to deal with this?

11 MR. THOM: To prevent patent errors.

12 MR. EATON: If it is a complicated problem  
13 involving fact or law, the judge can say file notice  
14 of objection and carry on in the ordinary way, but  
15 this special release we are recommending is for clear  
16 cases and immediate release because the taxpayer is  
17 unable to carry on his business.

18 MR. THOM: I think we can assume the  
19 courts are not going to allow the just rights of the  
20 revenue to be defeated by this.

21 MR. COYNE: Do you see a problem of drafts-  
22 manship in the sense of having to define in the statute  
23 the precise powers of the court in these proceedings  
24 or do you envisage it as being left quite general?

25 MR. THOM: As lawyers, I think we are  
26 prepared to leave it to the discretion of the courts  
27 to see the rights of the revenue and the rights of  
28 the taxpayer are upheld.

29 MR. EATON: It precludes any proceedings  
30 taken upon any grounds upon which the taxpayer may  
wish to base his application so the safety valve is  
to be the court. It may be there is an error, and it  
looks as though there is, at the foot of page 22, and





1  
2 it is probably my fault. The statement is:

3 "However, on many occasions, certificates  
4 are registered under section 119 before  
5 assessment or simultaneously with assess-  
6 ment..."

7 I had understood that sometimes they raised it before  
8 assessment, and perhaps I am wrong on that. If so  
9 it should be corrected on the brief.

10 MR. THOM: I think the assessment is issued  
11 at the same moment.

12 MR. EATON: Are notices of assessment  
13 issued at the same time?

14 MR. THOM: I have always understood so.

15 MR. EDWARDS: From section 46(3) it would  
16 appear that there is a debt, whether or not there is  
17 an assessment. I think it is our position on this,  
18 as well as on other matters that a taxpayer should  
19 not be in a position of having to depend upon the  
20 good will of the minister. They should have the right  
21 to have the matter reviewed if an action is taken  
22 which is not reasonable and which is prejudicial.

23 MR. EATON: Perhaps we could leave it in  
24 this way, that the statement at the foot of page 22  
25 may be incorrect to the extent that it refers to  
26 certificates having been issued before assessment,  
27 but our main point is that the power to do this is  
28 there in the act and it should not be there.

29 MR. COYNE: I have no questions on the  
30 next part of the section, Mr. Chairman, dealing with  
Mens rea and criminal intent, which I think is quite  
clear. I would propose dealing with Part III, which  
deals with the administration of the Income Tax Act,





1  
2 at page 26.

3 THE CHAIRMAN: This is an important  
4 recommendation in respect of section 132 and re-  
5 stricting the offence to wilful offence.

6 MR. COYNE: Yes.

7 THE CHAIRMAN: Has anyone up here any  
8 questions to put on this section? I think we all  
9 understand it.

10 Go ahead Mr. Coyne.  
11  
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1 THE CHAIRMAN: Shall we move on, Mr. Coyne?

2 MR. COYNE: Unless any of the panel wish to  
3 expand on what is certainly quite a basic change in  
4 the thinking of the statute.

5 MR. LEMAY: One point that I think we should  
6 bring to the attention of this Commission is that the  
7 innocent is treated the same as the guilty under Section  
8 132.

9 THE CHAIRMAN: I am not sure this is the only  
10 way to cure it. It seems to me it is a way of getting  
11 at it, Mr. Lemay, as you pointed out. He may be innocent  
12 or guilty. Shall we move on?

13 MR. COYNE: Dealing with departmental  
14 interpretations your recommendation as it appears at  
15 the bottom of page 28 is that departmental recommendations  
16 of general application be published and I take it from  
17 the earlier part that you are thinking principally in  
18 terms of the assessor's guide. Then up towards the  
19 top of that page 28 you say "We submit, however, that  
20 when published interpretations are changed, the  
21 changes should not be applied retroactively in a way  
22 which is adverse to taxpayers who may have relied on  
23 them".

24 Of course, this is a thought to which the  
25 Department is very reluctant to accede but you make the  
26 point that there should be this degree of certainty  
27 in relation to these releases. My question is  
28 simply: What about changes in the law, that is, when  
29 a court has actually found, as they find occasionally,  
30 that the Department's interpretation of the section





1 in the release is wrong in law.

2 As I understand it, the Department normally  
3 feels in those circumstances they are bound to apply  
4 to reverse their field and apply the law as it has  
5 been authoritatively held to be. Do you feel that even  
6 in those circumstances the application of this law  
7 should be withheld until a new release can be  
8 published.

9 MR. GOODMAN: This would be a ruling which  
10 would be in favour of the taxpayer, no doubt.

11 MR. COYNE: An interpretation of practice, if  
12 you like, on the part of the Department which would  
13 be favourable to the taxpayer and which in the course  
14 of judicial proceedings were found to be improper.  
15 Perhaps this is not a very common thing but it  
16 certainly has happened, as you probably know.

17 MR. GOODMAN: In the rare situation such as  
18 that the comments which are made in the first paragraph  
19 of page 28 would apply.

20 In the converse situation, which is much  
21 commoner, where departmental interpretation is more  
22 restrictive and the courts ultimately find to be  
23 proper, one would expect the Department to then revise  
24 its administration, if necessary, retroactively because  
25 there, of course, no taxpayer is prejudiced. On the  
26 contrary.

27 MR. COYNE: Why should it work only one way?  
28 Supposing a taxpayer has relied on a published  
29 interpretation, which is more favourable to the taxpayer  
30 than some alternative interpretations and subsequently







1 before his file is dealt with he is assessed. The  
2 court tells the Department they have no business dealing  
3 with these matters this way. They should have dealt  
4 with it another way, which is more onerous to the  
5 taxpayers generally.

6 MR. GOODMAN: Because it is simply a fair  
7 ground rule by which to administer income tax. This is  
8 a very complex statute which may be interpreted only  
9 with a fair measure of cooperation from the taxpayer  
10 whose problems are reasonably complex.

11 The Department has undertaken the administration  
12 of this difficult statute and wishes to put in rulings  
13 of general application from time to time, in our  
14 opinion. Consequently anyone who relies upon that  
15 must be protected by the Department's own statement.  
16 It is the principle of estoppel and a matter of  
17 fairness, nothing more than that.

18 MR. COYNE: What you are saying here is that  
19 notwithstanding what the court may have said, the  
20 interpretation of the Minister of National Revenue or  
21 by his officials shall be authoritative to the extent it  
22 has been relied upon until the Minister has made a  
23 release to tell the people what the law is.

24 MR. THOM: Mr. Chairman, I would consider Mr.  
25 Coyne is quite correct. The law is the law. It has  
26 been so declared. It must be abided by by all  
27 taxpayers.

28 THE CHAIRMAN: You do not seek to put these  
29 administrative rulings into the same position as the  
30 law. It seems to me Mr. Goodman's suggestion would





1 do that. It would extend the law because if a taxpayer  
2 is entitled to depend on it, and the book is wrong, he  
3 is depending upon something that is not law; and if  
4 he is depending upon something that is not law and it  
5 is in his favour, it is automatically against the favour  
6 of the government. It seems to me the government is  
7 required to enforce the law. I don't think they can  
8 change the law by ---

9 MR. THOM: Not when it has been so declared  
10 by the court, no.

11 MR. COYNE: Would it be fair to draw a  
12 distinction between sort of rulings on general  
13 application to which you are referring here, that is  
14 typically the assessor's guide we are talking about,  
15 and a specific ruling which a taxpayer may have obtained  
16 in respect of his own particular case.

17 MR. THOM: The whole question would be if  
18 deferred compensation agreements and deferred payments  
19 are enacted. You have to come to a conclusion for  
20 what you think the law provides and there is a  
21 departmental practice with regard to that. Quite often  
22 the assessor is going to say this. They tell us what  
23 they are doing in their office and our suggestion is  
24 that that should be something which is available to the  
25 public at large. When Parliament wants to pass a  
26 law or the Department wants to pass a regulation that  
27 will become law, and the taxpayer acts on what the  
28 Department has said and then the Department says the  
29 administration of our practice is wrong because the law  
30 has been settled, they have to change their practice





1 or the taxpayer will get pinched, I think. It is too  
2 bad but they will.

3 In the meantime when the law itself doesn't  
4 speak fully and clearly there must be some protection  
5 to people under the deferred compensation agreements.  
6 We should know how the Department is going to assess  
7 them.

8 THE CHAIRMAN: It seems to me that you will  
9 have to ask through the Deputy Minister or through us  
10 that the Deputy Minister make available information  
11 which is now on the book and which is his best view as  
12 to what the law means.

13 Certainly, if the Deputy is going to do that,  
14 I would think he would write all over that "He is not  
15 bound by it". It is given by him honestly and fairly,  
16 believing these circumstances are such. If the  
17 taxpayer should rely on it, they do so at their own  
18 peril. I would think that is the only fair way he  
19 could do it. If you want him to go beyond that,  
20 I would think he would tear up the book and throw it  
21 away.

22 MR. THOM: Perhaps it is a matter of self-  
23 application of the law as to what he is changing.  
24 If he wishes to treat a certain situation this way for  
25 a number of years and then say "Now, I think I will  
26 treat it another way" he should do so presumably without  
27 regard to changing any statute or regulation but  
28 because for practical reasons he doesn't like his own  
29 practice.

30 THE CHAIRMAN: He is not the law. He can







1 make mistakes as well as the taxpayer can.

2 MR. GOODMAN: I think the question is to some  
3 extent semantic, Mr. Chairman. What the assessor does  
4 is the law until the minister overrules him. What the  
5 Minister does is the law until the Tax Appeal Board  
6 overrules him and so on up the chain. One cannot make  
7 such a simple distinction between the acts of the Depart-  
8 ment of National Revenue, which are not the law and the  
9 decisions of the courts, which are.

10 MR. THOM: You and I are not on the same wave  
11 length at all. We are going to start an argument amongst  
12 ourselves, Brother Goodman.

13 THE CHAIRMAN: It would seem to me that what  
14 the taxpayer does is not the law. It would likewise  
15 seem to me that what the assessor does is not the law.  
16 And the same thing would apply to the Minister in his  
17 administrative quality. The law must be what Parliament  
18 says it is or what the courts interpret what Parliament  
19 says. I do not understand an extension beyond that.

20 MR. THOM: Yet the assessor has a discretion  
21 of some nature.

22 THE CHAIRMAN: Yes, I agree the assessor is  
23 doing it the best way. He believes it to be the law.  
24 He operates having regard to what he thinks is the law.  
25 I don't think that makes it the law.

26 MR. GOODMAN: Yes what the Tax Appeal Board  
27 does is the law until the Exchequer Court tells them  
28 otherwise. That particular general statement does  
29 not commence at the Tax Appeal Board.

30 THE CHAIRMAN: I think it does. I am not a  
lawyer but I am prepared to take you on on that  
argument.

MR. GOODMAN: With respect, I have some doubt  
in my mind particularly in the tax machinery which makes  
it quite clear that an assessment is an appeal from a





1 judicial determination. The assessment is made at the  
2 moment the tax is assessed subject to appeal to another  
3 judicial tribunal.

4 MR. THOM: Surely if the law of the Tax  
5 Appeal Board is the law for six weeks, it is the law  
6 for six weeks.

7 THE CHAIRMAN: Mr. Goodman says it may be the  
8 assessor who establishes it. That is what I consider  
9 to be important. I think the law must be what  
10 Parliament says and may be modified by the courts.

11 MR. GOODMAN: I think there are differences of  
12 semantics, Mr. Chairman. Perhaps there are other more  
13 useful areas which may be proceeded with.

14 MR. LEMAY: The court cannot ratify the law,  
15 they can only give an interpretation of the law.

16 MR. EDWARDS: The law is always fixed. The  
17 only problem is nobody knows what it is until the court  
18 determines it. I think the law has been defined as  
19 the predictions of what the judge will do, which is  
20 sometimes difficult to understand.

21 I think in this area there are practical  
22 problems as well as problems of principle and I suppose  
23 if you followed the statement you have suggested of  
24 principle to its logical conclusion the Minister would  
25 have to go back and reassess every return for the  
26 previous four years where there has been a change, in  
27 the case of all taxpayers; which I think would be  
28 administratively not feasible, particularly the various  
29 changes that benefits a large number of taxpayers.  
30 Maybe the dividing line should be with respect to the







1 assessments that are still open or files that have not  
2 been dealt with.

3 THE CHAIRMAN: I think that the Minister does  
4 make certain changes in assessments because the  
5 interpretation of the law has been altered by the courts.  
6 I am sure you have seen them. I have.

7 MR. EDWARDS: But the Statute itself and  
8 departmental interpretations deal with situations where  
9 people must go ahead in the course of business and  
10 make decisions and I think certainly they should be  
11 entitled to at least a certain degree of reliance on  
12 published material.

13 COMMISSIONER PERRY: Are we not talking about  
14 the possibility of retroactive changes in written  
15 interpretations which are not yet issued? Is this  
16 not the subject in the paragraph.

17 MR. THOM: Yes.

18 COMMISSIONER PERRY: It is something which lies  
19 considerably in the future, I would say.

20 MR. EDWARDS: The problem occurs when the  
21 Minister has to change his practice because the law  
22 changes by the exercise of the court's power. In that  
23 case it has got to be applied retroactively because the  
24 law is what the courts say is the law.

25 MR. COYNE: It probably only arises in a fairly  
26 small minority of cases.

27 The next point deals with Departmental  
28 advance rulings and bears some relationship to what we  
29 have been discussing. On page 29 you say this:

30 "While it is recognized that





1 the Department's reluctance to  
2 adopt this proposal may be  
3 traced to many problems posed  
4 by advance rulings, the Association  
5 nevertheless recommends that  
6 advance rulings be given on  
7 questions of law and the exercise  
8 of administrative discretion.  
9 A factual question or a question of  
10 degree such as those which invariably  
11 arise in connection with capital  
12 gains, would not qualify for attention.  
13 On the other hand, sections 8, 16  
14 and 17 of the Income Tax Act, for  
15 example, allow the Department wide  
16 discretion to determine when a  
17 taxable benefit has been derived  
18 by a taxpayer".

19 First of all I query the use of the word  
20 "discretion" because I put it to you that the Department  
21 has no more discretion in determining whether a  
22 benefit has been received under section 8 than it has  
23 in determining whether a particular gain is of an  
24 income or capital nature. In every case there is  
25 no discretion in the sense of ministerial discretion.

26 MR. THOM: We did not use the word "ministerial"  
27 Mr. Coyne. We say departmental discretion.

28 MR. COYNE: Well then, what you are speaking  
29 of is the decision which is open to the Department as  
30 an assessing authority as to whether to assess or not to





1 assess.

2 MR. THOM: And how to assess, yes.

3 MR. COYNE: I put this to you: Why do you draw  
4 a distinction between the sort of examples that you  
5 give in the last sentence that you quote and other  
6 examples such as discretion between income and capital  
7 gains.

8 I put this to you: From the point of view  
9 of the taxpayer, if he is contemplating a complex  
10 series of transactions, the effect of which would be  
11 ruinous to him if taxes were imposed in a certain manner,  
12 what possible difference could it make to him whether  
13 the Department is concerned that he is getting the  
14 benefit under Section 8 or whether the particular gain  
15 that is involved in the transaction is of a capital or  
16 income nature. I don't understand why you draw that  
17 sort of distinction, which is unclear to me.

18 MR. THOM: The problem is to determine what  
19 the statute actually means. There is no wording  
20 anywhere as to what statute under this Act is of  
21 significance.

22 MR. COYNE: Surely that is only a question of  
23 degree. There are lots of cases which have dealt with  
24 the question but I cannot contemplate the situation  
25 where a man, whose decision is to go ahead with a  
26 transaction, will depend upon what view the Department  
27 expresses on the case.

28 MR. TAMAKI: I think the answer really is  
29 in the special sections 8, 16 and 17 the language is so  
30 wide, couched in such wide terms that initially the







1 assessor's reaction is very important. Once you have  
2 the assessment the onus is on the taxpayer to dislodge  
3 the assessment. That may be pretty difficult to do.

4 MR. COYNE: Are you not dealing here with  
5 circumstances -- correct me if I am wrong -- where a  
6 taxpayer is concerned to know in advance how a  
7 particular transaction is going to be assessed. If  
8 your ruling in advance is unfavourable he simply will  
9 not proceed with the transaction. There is no question  
10 of appealing the assessment because the transaction will  
11 not take place. There will be no assessment and  
12 therefore no appeal.

13 MR. TAMAKI: If the problem is a straight  
14 matter of capital gains or income, I think that is a  
15 matter for a lawyer to decide whether or not the  
16 profit would be taxable.

17 On the other hand if it is a question of  
18 whether or not there has been a benefit or gain by  
19 a shareholder or there has been a benefit under  
20 section 17 or where the price is right under section  
21 437 and so on, it is very difficult to know just what  
22 the reaction of the Department is going to be.

23 MR. COYNE: I think I understand your point.  
24 From the point of view of the taxpayer's interest,  
25 the only interest to the taxpayer in advance rulings  
26 is to know whether the Department is going to assess  
27 or not assess.

28 MR. TAMAKI: They will know which section  
29 will be applied.

30 MR. THOM: This is an exercise in considerable





1 restraint on our part.

2 MR. COYNE: Yes. I am interested in the  
3 reasons for your restraint.

4 MR. THOM: Mr. Tamaki has given an explanation  
5 to which I subscribe, that there are so many sections  
6 in this Act that there is nothing to guide us as to  
7 what the Minister may do in a certain situation. There  
8 is no practice or no cases. There is no public  
9 indication and you can look and find a benefit here  
10 or up here or down there -- well, they are all benefits.  
11 Our clients want to do business.

12 MR. COYNE: Have you any suggestion as to  
13 how one should define the circumstances under which an  
14 advance ruling should be given and circumstances under  
15 which it should be refused? Is this something that  
16 requires definition or is this merely a matter of  
17 Departmental policy?

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1 MR. GOODMAN: We have suggested in the  
2 opening paragraph, Mr. Coyne, that the Association  
3 nevertheless recommend that advance rulings be given  
4 on questions of law and the exercise of administrative  
5 discretion. We would expect the practice of the  
6 Department of National Revenue to conform with that  
7 principle.

8 MR. COYNE: You feel that that principle has  
9 in it a reasonable degree of certainty and meets some  
10 of the other standards about which we spoke earlier.

11 MR. GOODMAN: I should think so. The  
12 difference between questions of fact and questions of  
13 law sometimes occupies the courts, but ---

14 MR. COYNE: I would say on that that as far  
15 as section 8 is concerned the question is almost  
16 invariably a question of fact.

17 MR. GOODMAN: With respect I think not --

18 MR. COYNE: I mean in the legal sense.

19 MR. GOODMAN: -- in this sense, that if one is  
20 able to say that the principle of law to be applied  
21 is clear, the difficulty which arises is in ascertaining  
22 the facts and arriving at the proper inferences from  
23 those facts, then certainly it is not a matter that  
24 is readily susceptible of advance rulings.

25 On the other hand, when you discuss something  
26 like Section 8, the difficulties are not primarily  
27 factual ones. The difficulties arise from simple  
28 questions like this. If a meeting of shareholders of  
29 a company, at the annual meeting, are provided with  
30 free lunches, is this a benefit conferred on shareholders?





1 If an employer provides free transportation to and from  
2 work for his employees, is this a benefit conferred upon  
3 employees under Section 5? There is no dispute about  
4 the facts at all. It arises entirely from a lack of  
5 precision in the law itself.

6 MR. COYNE: Do I take it that these are the  
7 type of general circumstances in which you are using the  
8 term "advance rulings"? Because if that is so, it is  
9 a very new use of the term to me. More normally the  
10 phrase "advance ruling" is used with respect to a pre-  
11 assessment, if you like, of a specific transaction,  
12 usually of some magnitude, vitally affecting a particular  
13 taxpayer.

14 MR. GOODMAN: That is right.

15 MR. COYNE: That is a very different sense,  
16 I would have thought, from the sense you have used it in,  
17 as a general principle to be applied in connection with  
18 free lunches at a boardroom meeting.

19 MR. GOODMAN: Let me just express it in this  
20 way. If the XYZ Company Limited, proposing to provide  
21 free lunches, requests a ruling and provides all the  
22 facts of the proposal, I think that company may be  
23 entitled to obtain a ruling in advance as to the liability  
24 of the shareholders. I am not arguing that that be made  
25 applicable in general terms to all free lunches given  
26 at all shareholders meetings. We are talking about  
27 private rulings, it is true. We are also talking about  
28 publication of the rulings.

29 MR. COYNE: Are these not really the  
30 circumstances which are important in the overall picture





1 and which are of real concern to taxpayers in connection  
2 with the subject of advance rulings? Surely the  
3 important matters are the individual transactions of  
4 magnitude --

5 MR. GOODMAN: Certainly.

6 MR. COYNE: -- and the fact that the taxpayer  
7 can afford to run no risk. Because if the risk does  
8 go against him, he is ruined. He therefore feels that  
9 he should know in advance whether or not an assessment  
10 is going to be raised. Such matters as rights of  
11 appeal and similar rights could not interest him less,  
12 because unless he can be assured that the transaction  
13 is not going to be taxed in the ruinous way he will not  
14 proceed with the transaction.

15 In the absence of such a ruling, I suggest that  
16 you get to the position referred to on page 32 in  
17 connection with Section 138A, where you say:

18 "If the Minister does not  
19 give advance rulings under his  
20 specific discretionary powers" --  
21 and we are dealing specifically here with Section 138A --  
22 "the taxpayers will be unable to  
23 undertake new transactions or if  
24 they do proceed will be left in a  
25 state of great uncertainty for  
26 an indefinite period of time".

27 MR. GOODMAN: For example, I suppose a  
28 company which proposed to transfer certain depreciable  
29 property from a parent company to a subsidiary is very  
30 much interested in the application of Section 8 and







1 Section 16 of the Income Tax Act which deal with benefits  
2 conferred on shareholders and the rather vague provisions  
3 dealing with indirect benefits under Section 16. Now,  
4 precise rulings are required on a precise transaction.

5 MR. EATON: I do not think we are coming to  
6 grips with Mr. Coyne's point really, which might be  
7 stated, perhaps over-simplified, as that as far as  
8 taxation is concerned he is far more interested in the  
9 capital gains area, say, in taking a chance to lay out  
10 the facts and to get a binding ruling on which he can  
11 base his future conduct of affairs than he is in getting  
12 a legal opinion from counsel based on a study of cases  
13 which counsel of necessity must say: "I cannot guarantee  
14 because the area is, to say the least, uncertain". From  
15 his point of view he knows what he is interested in,  
16 and I do not think anyone can argue against that. What  
17 you are really interested in is some explanation of the  
18 reason why we have not recommended advance rulings in  
19 this area.

20 MR. COYNE: That is precisely the point, because  
21 we have had recommendations from other groups along this  
22 line, and it is of interest that you have made a much  
23 more limited recommendation. In fact, your precise  
24 recommendation is limited really to cases of ministerial  
25 discretion, which are quite limited and are largely  
26 concerned with the new section 138A.

27 MR. LEMAY: If there be unlimited advance  
28 rulings, it seems that you would create a secret set of  
29 judgments or of jurisprudence which is not legally  
30 accessible to the taxpayers at large, and in fact would





1 create discrimination between taxpayers. In essence  
2 it would be an unfair system. The alternative would be  
3 to abolish all those private rulings, and then you would  
4 defeat the purpose of the secrecy of the Act and disclose  
5 matters to other taxpayers which had not been disclosed  
6 concerning the private affairs of a single taxpayer.

7 MR. COYNE: On that point I wonder if there is  
8 not a halfway position of avoiding publication of the  
9 actual rulings, which would reveal this confidential  
10 information unjustly, but where if there was any general  
11 trend of decision in these rulings this could be  
12 publicized. As a matter of fact, I think you suggest  
13 that very point on page 30, where you say:

14 "The benefit of publication  
15 may be conferred on taxpayers with  
16 a minimum of confusion by issuing  
17 memoranda composed of matter of  
18 general interest arising out of  
19 particular rulings".

20 I take it that in a sense that would avoid some of the  
21 undesirable features of complete secrecy which you  
22 mention.

23 MR. HULBIG: I think basically we should bring  
24 ourselves to make a blanket recommendation for advance  
25 rulings, realizing some of the difficulties involved. We  
26 have tried to steer a middle course. I think we have  
27 all been brainwashed in the past by the arguments which  
28 have gone back and forth over the years, and this was the  
29 best concensus which we could come up with. But I  
30 should not like it to be felt that we are only







1 recommending our specific recommendation. We should not  
2 be specific, but at the bottom of page 30 I think we  
3 give our views in the sense that we feel that the  
4 question of which matters merit advance rulings should  
5 also rest on the good faith of the administration. So  
6 far as ministerial discretion is concerned, in that case  
7 there must be an advance ruling for reasons which we  
8 have set forth.

9 THE CHAIRMAN: I am having a good deal of  
10 difficulty, Mr. Coyne, with this recommendation. How  
11 are we getting on?

12 MR. COYNE: I think pretty well. I am at the  
13 end of my questions, I think, Mr. Chairman.

14 THE CHAIRMAN: I am having quite a lot of  
15 difficulty here. An advance ruling means to me, of  
16 necessity, an assessment in advance based on the  
17 conditions laid down. I would not have thought that there  
18 was any more reason to suggest publicity in that case as  
19 there is in the case of any other assessment. If you  
20 wished to set up a procedure of advance rulings, it  
21 gives the taxpayer the opportunity to go to the Department  
22 to ask whether a certain result will flow. We have  
23 seen this done. We are not very much impressed by the  
24 U.S. procedure. Sweden has set up one for this sort of  
25 thing, where it has a court to deal with advance rulings,  
26 and its decision can be appealed. But it does mean  
27 that that court has to make assessments. The fact that  
28 it has to make assessments results in keeping down the  
29 number of applications to it to a relatively small  
30 number. And it makes a charge for it, too.





1           It seems to me that one has to recognize that  
2 if that is done the Departmental officials are not going  
3 to give any formal rulings very often if there is a  
4 better channel to go through. When I came to your  
5 recommendation I was rather hoping that you had in mind  
6 that if there were advance rulings they would be made  
7 in sections which you do not like, because they provide  
8 for discretion. I have in mind the dividend stripping  
9 provisions of the U.K. Act, which provides for advance  
10 rulings in respect of that section, and which lay down  
11 the procedure for an answer as to how this discretion  
12 will be rendered. It imposes on the revenue officers  
13 the need to reply promptly, or else they lose their  
14 rights. And likewise with the taxpayer.

15           As far as we can tell from asking questions,  
16 it does seem to work very well, but I would have thought  
17 that that is a fairly logical place for it. There may  
18 also be one or two other logical places for it. If one  
19 were going to impose it by law, he might apply it to  
20 the obvious places and see whether anything can be  
21 worked out, rather than to take the whole procedure  
22 which we have now and turn it upside down, in which  
23 case you might get absolutely nothing from the Department  
24 if you did that.

25           MR. EDWARDS: Mr. Chairman, certainly our first  
26 preference is that the ministerial discretions be  
27 removed; but I assume that this is on the basis that  
28 they should not be. I think we felt that there  
29 should be a mandatory procedure for departmental rulings  
30 in advance. With respect to the other transactions







1 where, as Mr. Coyne has said, there is a large transaction  
2 pending, which would ruin the taxpayer if he should be  
3 wrong, ordinarily we feel, as a matter of departmental  
4 practice, that those rulings should be granted. It may  
5 be that the reason we held back on the question of  
6 capital gains is because it is difficult to set out in  
7 a letter all the relevant facts, because the relevant  
8 facts include the whole background of the taxpayer and  
9 all his other transactions. I would assume that that  
10 is probably the reason, or one of the reasons, that  
11 the Department has been reluctant to give advance rulings  
12 on capital gains questions in the past. If a satisfactory  
13 ruling on a proposed capital gains transaction could be  
14 given, as far as I know this committee would certainly  
15 be in favour of it; but I think we held back on that  
16 because of the practical problem of setting out the  
17 facts.

18 MR. LEMAY: Then they should do away, of  
19 course, with paragraph 4 of section 46, which is the  
20 right of the Minister to reassess, which means that that  
21 assessment would be a final one.

22 COMMISSIONER PERRY: I read this with a  
23 somewhat rusty recollection of the American practice.  
24 I simply registered the thought that it seemed to me  
25 that you were planning your proposal very closely along  
26 the lines of the American limitations as to scope. As  
27 I recall it, they will not give a ruling on capital  
28 gains.

29 MR. THOM: Quite right. It is a question of  
30 degree.







1 COMMISSIONER PERRY: And they will not give a  
2 ruling on matters of fact. So I think that your  
3 recommendation is soundly based on one precedent.

4 MR. THOM: On the other hand, companies do  
5 this sort of thing for amalgamation purposes and for  
6 separation purposes. That has occurred in the Canadian  
7 business field and it is all very complicated, where  
8 foreign parents of subsidiary companies are involved.  
9 With certain foreign laws distortions are imposed on  
10 the transaction which are occasioned by the demands of  
11 a dominant parent in another country raising questions  
12 under our Act which do not respond to the sections of  
13 our Act. But the situation can be completely laid out  
14 in black and white. As we all know, in certain  
15 instances letters are written by the official merely  
16 saying that it is all right. At times he does not even  
17 write a letter, but what have you got? Nothing. What  
18 we want is to receive some recognition from the  
19 Department in regard to this matter, rather than any  
20 statute.

21 THE CHAIRMAN: I always thought you had quite  
22 a lot.

23 MR. THOM: You do get quite a bit, but then  
24 there comes a time when you do not.

25 COMMISSIONER GRANT: Mr. Thom has just been  
26 discussing a matter which I do not think we have dealt  
27 with here as far as the evidence this morning is  
28 concerned as a subject itself, and I think it could be  
29 helpful to the Commission. That is as to what the views  
30 of the association before this morning are on the





1 present system, how cooperative they find the branch  
2 officers, and how far they get with their efforts to  
3 get advance rulings.

4 MR. EATON: It probably varies considerably  
5 from one district office to another in one part of the  
6 country as compared with another, and between one  
7 group of individuals compared with another. It is  
8 very difficult to generalize. I am sure that all of  
9 us have had highly satisfactory experiences and some of  
10 us have had highly unsatisfactory experiences. It is  
11 the very nature of the lack of uniformity which I think  
12 is one of the reasons why there should be a change.

13 COMMISSIONER GRANT: I think the brief points  
14 out that you may have uniformity where the ruling has  
15 come from Ottawa, because it is the practice of the  
16 Department to send those rulings out to the regional  
17 offices.

18 MR. EATON: Yes, that is correct, Mr. Grant.  
19 Actually I was not thinking of inconsistency in ruling  
20 on the subject matter so much as inconsistency of  
21 approach as to whether a ruling will be given, or how  
22 specific a ruling will be given. I think that varies.  
23 I think it is unfortunate because not every taxpayer  
24 necessarily has the same opportunity.

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2 The departmental officials may feel inclined, which  
3 is against their usual practice, sometimes to give  
4 an indication on an hypothetical set of facts. They  
5 might do that to a particular individual because they  
6 know him. I think general formalization and making  
7 the whole thing regular is greatly to be desired.  
8 Although certainly speaking for myself I do not know  
9 of any experience where a taxpayer has really been  
badly treated.

10 COMMISSIONER GRANT: The personal element  
11 enters into the thing quite strongly now as to the  
12 solicitor making an enquiry, be it on a regional  
13 basis or on an ad hoc one.

14 MR. EATON: Or whether the taxpayer is  
15 represented by a solicitor at all or whether he has  
an accountant with him.

16 THE CHAIRMAN: The accountants do not  
17 provide any very good road to this. I, myself, have  
18 sometimes got them to express themselves and the same  
19 people have sometimes afterwards refused to do so.

20 COMMISSIONER GRANT: There was an instance  
21 the other day where the advanced information was that  
22 one company was to buy the assets of another company  
23 and it had a reaction on the stock exchange because  
24 both of the companies were listed. Some period of  
25 time went by and then the announcement came out that  
26 the deal was off, and the deal was off because the  
27 assets to be acquired were to be paid for in the form  
28 of debentures and the interest on the debentures would  
29 not be allowed as an expense before tax. Therefore the  
30 whole thing was called off. Whether that was on the  
basis of an advance ruling or whether it was on the





1  
2 basis of a solicitor's opinion, of course I person-  
3 nally do not know.

4 COMMISSIONER PERRY: Just to clear up the  
5 semantics here, could we not agree that in an advanced  
6 ruling we are speaking of a determination relating to  
7 the affairs of an individual taxpayer, that this is  
8 what the American advance ruling system is. There is  
9 in addition this system of interpretation from the  
10 Internal Revenue or Treasury decision, which I think  
11 are somewhat akin to the publication of the assessor's  
12 guide.

13 MR. EATON: I do not think we would like  
14 our recommendation to be called the American system  
15 although we have happened to come out at the same  
16 result.

17 COMMISSIONER PERRY: No, it is the only  
18 comprehensive system we have been able to observe.  
19 There may be a little confusion between advanced  
20 rulings in the sense of determinations relating to the  
21 individual taxpayer and interpretative statements of  
22 general application. I do not think we should confuse  
23 these two.

24 MR. EDWARDS: There have been a few infor-  
25 mation bulletins recently issued by these departments,  
26 but they are only in very narrow areas.

27 THE CHAIRMAN: You are asking for no change  
28 in law? You are asking the department to provide  
29 that the taxpayers' allowances when they ask them in  
30 advance. Surely there must be a limit on that. You  
are not proposing that the department should provide  
a ruling in advance in every conceivable circumstance,  
or are you?







1  
2 MR. HULBIG: We could not conclude on  
3 that. We left it at the outset at any rate to the  
4 good faith of the department. I think we felt that  
5 if it were made known that they were to issue these  
6 rulings, at the present at any rate, no change in the  
7 law was required except ministerial discretions, in  
8 which case we would like to see something in the law.

9 THE CHAIRMAN: But it does not cure Mr.  
10 Thom's concern that what they would then issue would  
11 be the same thing they now issue? Or would you have  
12 them issue something different? They are now issuing  
13 opinions.

14 MR. THOM: Opinions, yes, over the  
15 signature of John Jones, for example.

16 THE CHAIRMAN: And that is satisfactory?

17 MR. THOM: Speaking personally?

18 THE CHAIRMAN: No.

19 MR. THOM: It is satisfactory because  
20 I have never found a case where they have gone back  
21 on one of these pieces of paper. What we are getting  
22 at is clients who have a great deal involved and  
23 would like to have some reasonable assurance. They  
24 would like to see if they do the transaction in this  
25 way what the tax consequence will be.

26 THE CHAIRMAN: I am sure they would. But  
27 as I understand it, the present practice of the  
28 department, as we know it, of issuing letters which  
29 give their opinion as to what is going to be forth-  
30 coming under a certain set of circumstances would  
virtually be extended to all transactions.

MR. THOM: Yes.

THE CHAIRMAN: You are not asking the







1  
2 department to write a different type of letter?

3 MR. THOM: No.

4 MR. EATON: No.

5 MR. COYNE: And you are not suggesting  
6 that these rulings or opinions be binding on either  
7 party, that is either on the Crown or on the taxpayer?

8 MR. GOODMAN: Legally binding?

9 MR. COYNE: Yes.

10 MR. GOODMAN: No, we say to the contrary.

11 MR. THOM: I do not see how they could be  
12 binding.

13 COMMISSIONER PERRY: The greatest forma-  
14 lization and perhaps the greatest change would be that  
15 there would be some publicity given where a principle  
16 had been settled in a ruling.

17 MR. THOM: That is right.

18 COMMISSIONER PERRY: Which again, if you  
19 forgive me mentioning the American system, is part  
20 of the function of the interpretative statements they  
21 issue.

22 MR. THOM: Yes.

23 THE CHAIRMAN: The publicity you are  
24 suggesting would come about, of course, in the  
25 assessor's book.

26 MR. THOM: In the assessor's book, yes.

27 THE CHAIRMAN: Because if they gave a  
28 ruling and changed their previous practice, they would  
29 issue a page in the book.

30 MR. EATON: But the public would not have  
the opportunity of going behind the interpretative  
statement to see what ruling it was based upon. I  
think this must be secret within the department.





1  
2 COMMISSIONER GRANT: Would you have con-  
3 firmed, Mr. Chairman, what I think was said to you  
4 a little while ago, that this would not involve amend-  
5 ment to the act except in the realm of ministerial  
6 discretion?

7 MR. THOM: That is my understanding.

8 THE CHAIRMAN: I think this is a good time  
9 to pause. We will come back to page 33 which deals  
10 with assessment and reassessment. Then we are left  
11 with only fifty more pages!

12 The hearing will stand over until 2:20.

13 --- Luncheon adjournment.  
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2 MR. COYNE: Mr. Chairman, we are at  
3 section 3 of this part dealing with administration,  
4 at page 33. I direct your attention to a section on  
5 page 35. You say:

6 "It is also a matter of concern under  
7 present law that if fraud or misrepres-  
8 sentation has been committed in  
9 conection with any matter relating to  
10 an income tax return, the tax payer  
11 may be re-assessed at any time, irres-  
12 pective of the 4-year limitation, even  
13 though the re-assessment relates to a  
14 matter entirely unconnected with the  
misrepresentation or fraud."

15 In this section you have several recommendations  
16 which, as I understand them seek to define and  
17 delimit the rights of the minister where he opens  
18 up an assessment for, ostensibly, a particular  
purpose.

19 I would just ask ybutwhether you feel  
20 that this same principle should apply both ways.  
21 I think it is the case that a taxpayer is not  
22 estopped by anything that he puts in his income tax  
23 return and that once the return is opened by a notice  
24 of objection, it is then opened to the taxpayer to  
25 carry forward an appeal on any aspect of the assess-  
26 ment, not just any aspect which may be ostensibly  
in dispute at the departmental stage.

27 MR. EATON: I do not quite follow that  
28 last observation, Mr. Coyne. A notice of objection  
29 must state reasons.

30 MR. COYNE: Yes, but as I understand it  
you are not bound by those





1  
2 you are not bound by those reasons in the sense  
3 that your notice of appeal, if you carry it to appeal,  
4 must be limited to the subject matter of the notice  
5 of objection.

6 MR. EATON: Not in terms of reason and  
7 arguments and so on, but I think a good question  
8 would arise if you tried to attack an entirely  
9 different aspect of assessment in the notice of  
10 appeal than mentioned in the notice of objection.

11 MR. COYNE: This may be a matter of inter-  
12 pretation, I am not sure, but my impression has  
13 always been the other way, that the views taken by  
14 the board is that once an assessment has been opened,  
15 so to speak by appropriate appeal procedures it is  
16 open to the taxpayer in effect, for example, to make  
17 a claim for a deduction that he never made originally  
18 at all.

19 MR. EDWARDS: I have been under the same  
20 impression as you, Mr. Coyne, although I think there  
21 is one statement in one of the Tax Appeal Board  
22 decisions that a taxpayer could not raise grounds  
23 in the notice of appeal that he did not raise in the  
24 notice of objection. But I understand that in the  
25 Exchequer Court you can raise new points; it is a  
26 trial de novo.

27 MR. EATON: If you have an assessment on  
28 what the taxpayer thought was a capital gain from  
29 a certain transaction and this is raised in the  
30 notice of objection, surely it is clear that the  
taxpayer could not at a later stage raise the  
question as to whether he could deduct to some ex-  
pense related to an entirely different transaction







1  
2 within the same taxation year. I have always thought  
3 that.

4 MR. COYNE: It may be a question of inter-  
5 pretation. I take the opposite view myself, and I  
6 have understood, perhaps wrongly, that the Board took  
7 this view.

8 MR. EATON: If you and Mr. Edwards agree  
9 in this, I am obviously wrong.

10 MR. COYNE: But anyway, the sole purpose  
11 of my question was this. There is a series of places  
12 in your recommendations on page 37 where you recommend  
13 that there be certain limitations or definitions im-  
14 posed upon the extent to which the minister can take  
15 advantage of a waiver filed by the taxpayer or re-  
16 assess after the four year period in the event of  
17 fraud. Let me put it this way. If the understanding  
18 that Mr. Edwards and I have on this point is correct,  
19 should there be an element of mutuality here? If the  
20 minister is to be restricted, should the taxpayer  
21 also be restricted?

22 MR. HULBIG: I think so. I think the  
23 reason we did not consider this is because it would  
24 happen so rarely that this would arise.

25 MR. EDWARDS: Mr. Chairman, I think the  
26 mutuality certainly does not go very far because if  
27 the taxpayer had a right to file an amended return  
28 within a four year period and have reassessment  
29 automatically, then I would think it might be quite  
30 reasonable to say that he should not have the right  
to raise any new points after the expiration of the  
four year period. I think that would be putting him  
on the same basis as the minister because the







1  
2 minister can raise any new points within the four  
3 years. I think certainly since the minister has that  
4 privilege within the four year period the taxpayer  
5 should have that same right. Maybe after the expi-  
6 ration of the four year period there is some justi-  
7 fication for saying that the taxpayer should not then  
8 be able to raise any new points.  
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1 MR. COYNE: In the event, I take it that that  
2 is not something which you would regard as being of  
3 any significance in practice? It would not concern you  
4 particularly?

5 MR. EDWARDS: No.

6 MR. COYNE: Turning now to page 37 the sixth  
7 and final recommendation is that the taxpayers have the  
8 right to apply to the Tax Appeal Board or the Exchequer  
9 Court as the case may be on motion for permission to  
10 file a Notice of Objection or Notice of Appeal after the  
11 expiry of the statutory delays under such circumstances  
12 as the Board or court may find reasonable and just.

13 I think one of the difficulties in connection  
14 with the present rule is that if you exhaust the  
15 statutory period nobody can provide you with any  
16 relief.

17 MR. THOM: That is right.

18 MR. COYNE: Would you think it worthwhile in  
19 relation to this recommendation to give the Minister  
20 power to concur in an extension and thereby avoid the  
21 necessity of making an application to the Board or  
22 Court.

23 MR. EATON: That would certainly be better  
24 than the present situation. I had one case where Notice  
25 of Objection was filed on the 91st day because the  
26 fellow made a mistake in his arithmetical calculation  
27 on the calendar.

28 MR. LEMAY: The Minister today has the right  
29 to reassess you during that period if he wants to  
30 apply the remedy and issue a new assessment and vary







1 the original assessment in any way he wants so that  
2 already exists as far as the Board to reassess is  
3 concerned but the taxpayer has no personal relief.

4 MR. EATON: That would only arise if the Minister  
5 thought there was an arguable contention.

6 MR. THOM: Which of course, he is not likely  
7 to think if his original ruling advanced under the  
8 administration does not come within the general  
9 practice of jurisprudence whereby the courts have the  
10 right to allow litigants to be heard if they show  
11 cause. It goes back to, I think, the historical roots.  
12 The issue has never been raised and the Minister has  
13 been sort of required to say "Why shouldn't there be  
14 some latitude for the hard case. Really, who have you  
15 hurt"? Again, cannot the courts be trusted to  
16 exercise reasonable discretion and not allow every  
17 careless and second guessing taxpayer to come in two,  
18 three or four years later and say: "Oh, I forgot  
19 something". I don't think that will happen, frankly.

20 MR. COYNE: I understand your recommendation.  
21 I was wondering whether there would be any advantage  
22 in granting the Minister the power which he does not  
23 have at the moment, except indirectly as Mr. Lemay  
24 points out, of issuing a new assessment which can be  
25 appealed to the Board or Court in an application ---

26 MR. THOM: He is not likely to concur.

27 MR. HULBIG: Why not. It might be a short  
28 circuit to some difficult situations.

29 MR. EATON: I was wondering if Mr. Coyne is  
30 suggesting this as an alternative or an addition.





1 MR. COYNE: I was really asking the questions  
2 in terms of an addition to your recommendation here,  
3 not as a substitute.

4 MR. THOM: He could concur in an application  
5 to the court if he wishes to and express his agreement.

6 MR. LEMAY: Yes. If you petition the court  
7 from the Tax Appeal Board or the Exchequer Court, and it  
8 was your right to file either a Notice of Objection or  
9 Notice of Appeal, the Minister has various alternatives  
10 of agreeing to have this consenting judgment on your  
11 application, which is the normal procedure in all  
12 matters, or he could just let the matter go without  
13 concurring and without contesting your application  
14 and then the judge presiding over the court at the  
15 moment will be in a position to determine if you have  
16 a valid ground to oppose or to appeal, and if your  
17 grounds are reasonable, he should concur in your  
18 application.

19 MR. COYNE: I was really thinking of a more  
20 informal proceeding because certainly in cases of  
21 Notices of Objection it never gets to the Board or to  
22 the Court so that your procedure here, as far as Notice  
23 of Objection is concerned, involves a special application  
24 to a judicial body or board. It is conceivable that  
25 could be made unnecessary if the Minister had the  
26 statutory right to concur in an application made by  
27 you for an extension.

28 MR. THOM: By all means, I agree.

29 MR. HULBIG: I think that is the answer.

30 MR. EDWARDS: As long as there is always a right





1 to go to the courts.

2 MR. COYNE: Turning to page 39 where you make  
3 some recommendation concerning the appeal procedure.  
4 You say "It is recommended that the taxpayer be given  
5 the right to have an informal hearing by the Appeal  
6 Section of the Taxation Division within sixty days of  
7 the filing of his Notice of Objection; and that a  
8 taxpayer's objection be deemed to be allowed if he  
9 has not received the Notification of Minister within  
10 90 days after the filing of the Notice of Ojection  
11 unless the taxpayer waives this time limit --".

12 I would ask you whether this is not possibly  
13 too rigid a type of provision particularly in view  
14 of the fact we have just been talking about the right  
15 of the taxpayer to seek an extension. Now, you are  
16 now suggesting that the Minister should be categorically  
17 bound by the delay period. I put it to you as to  
18 whether or not the second type of provision would  
19 inevitably result in more cases being thrown into the  
20 courts which may have been settled without litigation  
21 simply because the Minister and his staff are not able  
22 to get around to dealing with them within ninety days.

23 Obviously, if that is the case, they will  
24 simply file a proforma notification and say to the  
25 taxpayer "all right, you have your right to appeal".

26 MR. EATON: Alternatively they may consider  
27 hiring additional staff and trying to speed up their  
28 procedures. That is the answer to the second point.  
29 On the first point, I would think if the taxpayer has the  
30 right to apply to the court for an extension of the







1 90 days, the Minister should have the same right.

2 MR. COYNE: The problem in the Exchequer Court,  
3 for example, it is now possible to flush out a reply  
4 to a Notice of Appeal because the Act specifically says  
5 that the reply shall be filed within 60 days or such  
6 further period as the judge may allow. There is no  
7 such provision in the Income Tax Appeal Board section.  
8 Perhaps there should be.

9 MR. LEMAY: What this 90 day delay would amount  
10 to would be a reduction of the 180 days mentioned in  
11 Section 59 where you can go to the courts directly if  
12 the Minister does not reassess or affirm or send his  
13 notification.

14 MR. EATON: I had rather come to the  
15 conclusion that more time is being taken at the present  
16 time than needs to be taken in dealing with these  
17 matters. Perhaps we are wrong. We do not know what  
18 goes on in the Department. I think it was the  
19 impression of the committee that we should thereby  
20 shrink the time limit in an effort to try to make the  
21 Department people involved just sharpen up their timing  
22 a little.

23 MR. THOM: Three, four, five or six months  
24 delay is not unusual at all.

25 MR. GOODMAN: Two years delay is not unusual  
26 at all.

27 MR. THOM: It seems unnecessary. After all,  
28 the assessors have had all the time they want before  
29 they assess. This is followed up by representations  
30 and statements and why the matter should disappear under-





1 ground for such a period is difficult to explain to  
2 your clients. It is difficult to explain to the  
3 public. It is a matter of trying to accelerate the  
4 procedure of the Department and at the same time to  
5 retain the very great advantage of an informal appeal  
6 proceeding which resolves questions of fact without  
7 the necessity of expensive and litigious activity.

8 MR. COYNE: Is it not a pretty severe  
9 recommendation because the recommendation is that the  
10 taxpayer's objection be deemed to be allowed. In  
11 other words that is the end of it. He has won unless  
12 he gets his notification within 90 days. At the moment  
13 there is the provision whereby the taxpayer can take  
14 the appeal direct to the Tax Appeal Board if he has not  
15 heard from the Minister within 180 days. That is  
16 merely a presumption that the Minister has confirmed  
17 the assessment. It is very different from your  
18 suggestion that in a similar delay period, the objection  
19 be deemed to be allowed.

20 MR. THOM: Well, we are here muddling in a  
21 matter of administrative problems which is something  
22 about which we don't know the details. What we are  
23 trying to emphasize is the fact there should be greater  
24 speed and expedition in the procedure for the taxpayers.  
25 That is an essential element of our submission. This  
26 is where we feel the impact of the public, there is  
27 too much delay.

28 MR. COYNE: And would help to reduce these  
29 delays.

30 MR. THOM: Yes.







1 MR. EATON: It seems to me a large part of the  
2 difficulty is caused by the fact that some of the  
3 departmental people involved have no idea of the need  
4 for speed or have no idea of the problems clients are  
5 being caused because you occasionally hear the remark:  
6 "Why are you so worried? It has only been a year", not  
7 a very long term in their view having regard to the  
8 fact they have not been perhaps on the outside business  
9 operation for some years. They are just out of touch.  
10 I think what we are striving for is some method of  
11 making them aware, force them to become aware of the  
12 necessity for more speed.

13 If we have overstated the case by our  
14 recommendation, I don't think that the general theory  
15 behind it should suffer.

16 MR. THOM: There is also the aspect to be  
17 considered that the tax has almost invariably been  
18 paid which makes the public feel the government  
19 doesn't really care. After all they have the money.  
20 I am dealing with the reflections which the public  
21 feels.

22 It happens often in our combined practices.  
23 To make the point, we have mentioned that there should  
24 be greater effort in the expedition to settle the  
25 disputes.

26 MR. EDWARDS: I think the exercising of the  
27 right to go directly to the Appeal Board after 180 days  
28 is very seldom resorted to because it is difficult to  
29 get a favourable decision from the Department.

30 MR. COYNE: Turning then to the statutory





1 appeal procedure that you discuss next and particularly  
2 directing our attention to page 40 where you make  
3 some pretty fundamental suggestions in relation to the  
4 Tax Appeal Board. You say:

5 "The Board does not have  
6 sufficient members. Having  
7 regard to the great importance  
8 of appeals, the Board should be  
9 enlarged to the number required  
10 to carry the burden imposed on it.  
11 Because of the importance of the  
12 Board, which in fact acts as a  
13 court, and is described in Section  
14 91(3) of the Income Tax Act as a  
15 court of record --"

16 Of course many other board are also defined as a court  
17 of record such as the Tariff Board and the Air  
18 Transport Board and Boards of that nature.

19 "The status of the Board as a  
20 court should be recognized."

21 Then you recommend that the Tax Appeal Board  
22 be renamed the Tax Court and should be made a court  
23 of original jurisdiction on an optional basis with  
24 coordinating jurisdiction with the Exchequer Court  
25 as it is now.

26 I wonder if you would comment on this in  
27 relation to what I believe was the original philosophy  
28 behind the Tax Appeal Board, which was that what was  
29 needed was a relatively informal cheap -- cheap in the  
30 sense of costly to the taxpayer, yet independent





1 tribunal, not necessarily composed wholly or lawyers,  
2 although I think lawyers have in fact been appointed,  
3 but in effect to deal with tax appeals of the relatively  
4 less important kind but more or less on a summary  
5 basis; thus permitting many small taxpayers access to  
6 a tribunal to whom an appeal would frequently be too  
7 costly if they had to go to court, specifically the  
8 Exchequer Court?

9           Would you just comment on your recommendations  
10 in relation to that thesis, if you like.

11           MR. THOM: I think if they were on the limits  
12 that you were originally stating, I didn't know that was  
13 expressed publicly. That could have been but I do know  
14 in certain cases, experience over the past fourteen  
15 years is that the Board is actually capable and does  
16 handle cases of great magnitude on a basis that is  
17 adequate and effective and satisfactory. A low cost  
18 type of litigation is desirable in the tax field and  
19 that the informality of their proceedings is also  
20 desirable.

21           Many cases of great magnitude come to the  
22 Tax Appeal Board and this, I think, has given us the  
23 view that the Board should be recognized.

24           MR. COYNE: Yes, but I wonder whether  
25 perhaps I am reading too much into this. For example,  
26 if salaries are too low to attract a sufficient number  
27 of competent members or if the terms of tenure are  
28 not sufficiently attractive, if the superannuation  
29 arrangements are not adequate, surely these are all  
30 matters of detail that can be rectified in one way or







1 another.

2 My query is directed towards the concept.  
3 Perhaps I am misreading you; that the Board is not  
4 adequate and that it must be more formal, which I read  
5 into this recommendation, be known as a court.

6 MR. THOM: Yes.

7 MR. EATON: I think the main emphasis behind  
8 our recommendation is that sort of detail that you  
9 mention. Better remuneration, better tenure of office,  
10 better superannuation and so on. I don't know whether  
11 it matters whether you call them a court or a board  
12 or whether they rule or whether they do not. I do not  
13 think this is too important.

14 If there is going to be any sort of  
15 compromise to be made in this it should be made on the  
16 side of keeping it informal and observing the very thing  
17 that you mentioned at the outset, namely the right of  
18 the small taxpayer with a small appeal to appear before  
19 the Board, even if he has not got a lawyer.

20 MR. LEMAY: One thing we must remember is  
21 that the law of evidence applies before the Board.

22 THE CHAIRMAN: And it is a court of record.

23 MR. LEMAY: Yes, and only admissible evidence  
24 should be brought into a Board's record or a court's  
25 record so whether the name is changed or not, as Mr.  
26 Eaton was saying, is not essential but we feel that  
27 functioning as a court, it would probably be more  
28 appropriate to call it a court than a board.

29 MR. EATON: It is not really operated in  
30 accordance with the original thought.





1 MR. EDWARDS: I had the same understanding  
2 you had, Mr. Coyne. This would be quite a lot more  
3 informal than a court, the sort of place where a  
4 taxpayer could go by himself without representation and  
5 so on. As you know, in practice it has not worked  
6 out that way. It is not very often that a taxpayer  
7 takes his own appeals. The rules of evidence are  
8 applied and often the taxpayers taking their own  
9 appeals are thrown out because they have not  
10 discharged the onus of proof.

11 THE CHAIRMAN: That may be but he is not  
12 charged with any costs for his appeal, Mr. Edwards.

13 MR. EATON: That is a big advantage he wants  
14 to see retained.

15 THE CHAIRMAN: Do you know whether accountants  
16 are handling cases at the Board still? I think at the  
17 beginning they felt they should have the right to do  
18 so and some did. Many accountants did not agree with  
19 this practice, I may say. I don't know whether they  
20 are continuing. Do you<sup>know</sup>/whether that is so and whether  
21 it is a right that ought to be preserved.

22 MR. GOODMAN: There are a few which appear  
23 before the Tax Appeal Board even today. It is not  
24 common, though.

25 MR. LEMAY: In Quebec it is not admissible  
26 to practice as such.

27 THE CHAIRMAN: It is not admissible.

28 MR. LEMAY: No, not under the Bar Act.

29 THE CHAIRMAN: I suppose they can always come  
30 to Ottawa and appear, can they not?







1 MR. LEMAY: They can try.

2 COMMISSIONER BEAUVAIS: You say in Quebec  
3 Mr. Lemay, the chartered accountants cannot ---

4 MR. LEMAY: Practice law.

5 COMMISSIONER BEAUVAIS: I have been before  
6 the Board.

7 THE CHAIRMAN: As a witness, probably.

8 COMMISSIONER BEAUVAIS: No, as counsel.

9 THE CHAIRMAN: Then you have probably broken  
10 the Lawyer's Act and maybe prosecuted.

11 COMMISSIONER BEAUVAIS: I know.

12 MR. COYNE: Just one other question on this  
13 aspect of the appeal procedure. Why do you want to  
14 eliminate the to the Exchequer Court from which there  
15 is an appeal to the Supreme Court of Canada under  
16 the Supreme Court Act in the first instance, although  
17 it is very seldom used? Why are you recommending that  
18 cases which come before the Tax Court have the right  
19 of appearing in the first instance before the Exchequer  
20 Court?

21 MR. EATON: I think one of the thoughts behind  
22 this was simply expedition, reducing some of the  
23 workload of the Exchequer Court for trials and  
24 consistent with the other recommendation which should  
25 improve the trial procedure before the Tax Appeal Board,  
26 whereas the need for having this option for trial  
27 denovo in the Exchequer Court.

28

29

30

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1 THE CHAIRMAN: Why do we need three courts  
2 for hearing tax appeals, or, in other words, two appeals  
3 from the decision of the original court? It is not a  
4 different jurisdiction because the courts are  
5 concerned with federal matters. Would not one appeal  
6 be adequate?

7 MR. EATON: That is a very good question, Mr.  
8 Chairman.

9 MR. THOM: I suppose the cynical would say  
10 it is to keep the lawyers busy.

11 MR. EATON: There is a lot to be said for that,  
12 certainly from the point of view of time and cost.

13 MR. THOM: As a third step, in the U.K. there  
14 they apply : from the commissioners to a judge of  
15 original jurisdiction, and then they can go to the  
16 Court of Appeal and then to the House of Lords. We  
17 have not got that extra step here.

18 THE CHAIRMAN: I do not know how one would  
19 change from our present system of two courts in Canada.

20 MR. HULBIG: In the States they have the two,  
21 a tax court, and then a Court of Appeal and then a  
22 Supreme Court.

23 MR. THOM: They are quite different sources  
24 of approach to tax appeals.

25 THE CHAIRMAN: Also they have tax cases, I  
26 believe, in state courts.

27 MR. EDWARDS: I think one reason, maybe not  
28 the conclusive reason, for having two stages is that  
29 you avoid too heavy a work load on the Supreme Court,  
30 because it also hears many other types of case as well





1 as tax cases, and recourse to the courts should only be  
2 heard in cases perhaps involving important tax  
3 principles. However, under the present law any tax  
4 case can go to the Supreme Court.

5 MR. EATON: Although I may not agree with  
6 this view, a lot of the members of the Canadian Bar  
7 Association over the years have felt it necessary to a  
8 good judicial system to have a double appeal, as we  
9 have in the provinces. You can appeal to the provincial  
10 court of appeal and then to the Supreme Court of Canada.

11 At the time when the Supreme Court of Canada  
12 jurisdiction over ordinary appeals was limited, by  
13 increasing the monetary amount from \$2,000.00 to  
14 \$10,000.00 a few years ago quite a lot of people felt  
15 that this should not have happened because it deprived  
16 the subject of another right of appeal. The general  
17 thinking was that the trial judge can be quite wrong  
18 and that the first Court of Appeal can be quite wrong,  
19 and that there should be yet another one.

20 COMMISSIONER GRANT: I should like this  
21 information for myself with regard to our present setup  
22 of the Income Tax Appeal Board. Mr. Fordham is not a  
23 lawyer, is he?

24 MR. THOM: Yes, he is.

25 COMMISSIONER GRANT: Oh. I understood that  
26 at one time he was a chartered accountant. Then the  
27 effect of this recommendation on page 41 is to turn  
28 the Exchequer Court, as far as taxation matters are  
29 concerned, into a Court of Appeal.

30 MR. EATON: Which it is now, in part of its







1 function.

2 COMMISSIONER GRANT: Yes. You have the right  
3 to go direct, however. You do not anticipate that  
4 to constitute the Court of Appeal as a tax court, and  
5 name it as such, and to give the members the standing  
6 of judges, will undo some of the very things which the  
7 Tax Appeal Board was meant to accomplish in the first  
8 instance? We have already touched on this matter. It  
9 is your considered opinion that it would not slow up  
10 the process to any extent, is it?

11 MR. EATON: No, I think it would speed it up.

12 MR. EDWARDS: I think that the great majority  
13 of cases now go to the Tax Appeal Board in the first  
14 instance. There may be a relative few which do go  
15 to the Exchequer Court, but it seems to us to be wasteful  
16 that there should be another trial, or trial de novo  
17 in the Exchequer Court, where the Tax Appeal Board  
18 follows the rules of evidence and ordinarily gives  
19 written reasons for judgment, and there is a record  
20 of evidence. Possibly the time element could be cut  
21 down by providing that there should be an appeal to  
22 the Supreme Court only in cases involving over a  
23 certain amount, or where leave was granted, something  
24 of that kind, so as to avoid many possible appeals to  
25 the Supreme Court on questions of fact, and that sort  
26 of thing.

27 MR. EATON: This could be improved by one  
28 very simple expedient, and that is by making the  
29 monetary jurisdiction on appeals from the Exchequer  
30 Court to the Supreme Court of Canada on tax matters the





1 same as it is on all appeals from provincial courts,  
2 namely \$10,000.00 instead of \$500.00. That will cut  
3 down the number of appeals considerably, always  
4 excepting the right to apply for leave to appeal on  
5 matters of law.

6 THE CHAIRMAN: Well, I am sure that your  
7 remarks will stir considerable interest among the  
8 appropriate authorities, and I thank you. I daresay that  
9 that is the kind of check which there should be on  
10 matters of this kind.

11 MR. THOM: As long as the Minister insists on  
12 his costs in the Exchequer Court and the Supreme  
13 Court, as he always does, there is quite a severe  
14 brake on specious and shallow appeals, to the Supreme  
15 Court particularly.

16 MR. LEMAY: One of the inequities of the  
17 present system is that when the taxpayer has won a  
18 favourable decision before the Tax Appeal Board he  
19 will have to undergo the burden of establishing himself  
20 again, his status, and so on. I suppose he has to  
21 go through further expense than if the Minister would  
22 have to appeal from that judgment of the Tax Board.

23 THE CHAIRMAN: Mr. Lemay, that cuts both ways,  
24 of course. If he has made a bad job of it before the  
25 Appeal Board and is unhappy about his case which he  
26 presented, then a trial de novo gives him another  
27 complete opportunity to present the evidence again,  
28 and so on.

29 MR. LEMAY: Under the present system the  
30 taxpayer is forced to bring again all that evidence,







1 plus additional evidence which he may have found.

2 MR. EDWARDS: If he did not have a right of  
3 trial de novo maybe he would be more careful in  
4 presenting his case the first time.

5 MR. COYNE: Then he might not be able to do  
6 so informally, Mr. Edwards.

7 MR. EATON: I think this is appropriate, but  
8 if it is not stop me. I should like to say this  
9 in passing, that I did discuss in general terms the  
10 recommendation contained in our brief with some  
11 senior officials of the Department of Justice, and  
12 they do not subscribe to it. They feel that the  
13 present system of trial de novo in the Exchequer  
14 Court should be retained. I mention that for what it  
15 is worth.

16 THE CHAIRMAN: Thank you very much, Mr. Eaton.

17 MR. THOM: I might also mention that the  
18 President of the Exchequer Court is violently opposed  
19 to it.

20 THE CHAIRMAN: To your recommendation.

21 MR. COYNE: That is the present President!

22 Mr. Chairman, that brings us to the next  
23 section, which is on evasion and avoidance. I was  
24 not proposing to ask any questions on this section.

25 THE CHAIRMAN: That is a matter with which  
26 all practitioners have been very much concerned indeed  
27 and very worried about, namely whether or not there is  
28 a fair distinction between the two and whether the  
29 law fully keeps them in their right departments.  
30 The solution is a simple one indeed. You would simply





1 throw out sections 137 and 138 and ---

2 MR. THOM: Mr. Gordon was asked in the House  
3 a few weeks ago whether section 138 had ever been used,  
4 and his categorical answer was no. I think it is time  
5 to repeal it under the circumstances.

6 THE CHAIRMAN: Probably it has never been used  
7 in the sense he meant, but I suspect that it has always  
8 been used in a different sense.

9 MR. THOM: As voters we consider that is a most  
10 improper use of statutory power, to keep a club behind  
11 your back and no one knows whether you have the power  
12 to swing it.

13 THE CHAIRMAN: No one knows whether you are  
14 going to swing it.

15 MR. THOM: But you have the power to swing it.  
16 The word "improper" we must thank our good friend  
17 Salter Hayden for.

18 COMMISSIONER PERRY: I always wondered how  
19 the concept of evasion had any authoratitive basis. It  
20 seems to us that there is in law the concept that the  
21 subject pays no more tax than the law requires, and  
22 there is nothing illegal or reprehensible about this.  
23 Why do you not recommend that this term be abandoned  
24 and no longer used in discussion?

25 MR. EATON: Henceforth it would be "improper"  
26 to use it!

27 MR. COYNE: I suppose that this section stems  
28 historically from the Income War Tax Act, and if Mr.  
29 Gordon's reply the other day was limited to section 138,  
30 strictly speaking he was correct. But legend has it I





1 think that under the Income War Tax Act, just before  
2 and at the beginning of the War the section was in fact  
3 used in several cases.

4 MR. THOM: I think the word "improper" is  
5 the joker in section 138.

6 MR. COYNE: As distinct from the earlier one.

7 MR. THOM: Yes.

8 MR. COYNE: Then that brings us to Bart IV.

9 THE CHAIRMAN: I think we might move on to  
10 surplus, because Mr. Beauvais is interested in the  
11 surplus part, and he has a long way to go before  
12 morning. I think we might move to surplus, if that  
13 suits you, which is at page 57.

14 MR. COYNE: Shall I introduce the subject, Mr.  
15 Chairman?

16 THE CHAIRMAN: If you please.

17 MR. COYNE: Perhaps it would be fairer to  
18 say that the principal recommendation, or the broadest  
19 recommendation, which you make in this field is in  
20 favour of the adoption of a flat rate of 15 per cent  
21 on all dividends. You refer to that on page 58 in  
22 these words:

23 "We agree with the Committee" --  
24 that is the Special Committee --

25 "that an entirely new approach  
26 should be adopted in the taxation  
27 of corporate surpluses based on the  
28 acceptance of the principle of a  
29 flat withholding tax on all dividends.  
30 While the imposition of tax on







1 dividends at a flat rate may  
2 appear inconsistent with the  
3 taxation of personal incomes at  
4 graduated rates, it may encourage  
5 investment in Canadian equities  
6 and it prevents discrimination  
7 against residents of Canada in  
8 favour of non-residents who are  
9 taxed on Canadian dividends at  
10 flat rates."

11 My first question, if you can call it a  
12 question, is this. How can you justify a low flat rate  
13 of tax on dividends in the face of the progressive  
14 nature of the income tax imposed on all other forms of  
15 personal income? I ask this particularly when you  
16 do not recommend any relief by way of refund for low  
17 income persons who receive dividends. That is, a  
18 15 per cent tax that you recommend, as I understand it,  
19 would apply on all dividends regardless of the total  
20 income of the recipient of the dividend. Does this  
21 not really destroy any appropriate notion of equity  
22 in relation to the income tax, or, put another way,  
23 is it not a cure which is worse than the disease of  
24 avoidance through surplus stripping, and the like?

25 MR. TAMAKI: In answer to that it all depends  
26 on what one means by interest income. I think a strong  
27 argument can be made against the concept of two  
28 taxes, a double tax if you like, on corporate earnings.  
29 The most important thing which we have to keep in mind,  
30 I think, is this, that we have to decide to make up





1 our mind whether we are going to tax dividends at  
2 personal rates and stick to that principle to the hilt,  
3 or to make modifications. We already have modifications  
4 in the Act. In the case of non-residents, for example,  
5 the flat rate principle is applied of ten or 15 per cent,  
6 as the case may be. In the Act itself, even for  
7 residents there are various flat rates of 15 per cent,  
8 with 30 per cent already recognized. These are all  
9 exceptions to the rule of graduated rates of dividend  
10 income, and I think in a way we are recognizing, or  
11 admitting, that the theory of graduated rates is not  
12 suitable for corporate distribution.

13         Once we do that it seems to me that we might  
14 as well admit what we are doing and say that there  
15 should be a flat withholding tax on dividends,  
16 distributions, and so forth. So that there will not be  
17 any need for many of the very complicated provisions  
18 of the Income Tax Act which are designed, I fear, to  
19 try to preserve the principle of graduated rates. I  
20 think it is as simple as that. I know that there may  
21 be all kinds of convincing arguments in favour of  
22 treating dividend income more favourably than interest  
23 income. I suppose it may be said that unlike interest  
24 income, dividend income is a distribution of income  
25 already earned, and that tax has presumably been paid  
26 by somebody else. But I think that you are quite  
27 right in saying that we are deliberately making a new  
28 rule for dividend income.

29         MR. COYNE: I suppose, Mr. Tamaki, that taking  
30 the question of equity as between various taxes, or the







1 level of taxation on taxable income, any such equity  
2 is considerably affected by the rate at which the  
3 various types of income are taxed, as well as affected  
4 by the method. Why the 15 per cent rate, or can you  
5 expand on your reasons for recommending a specific  
6 rate of 15 per cent? It could conceivably be at any  
7 level, including the level of zero. In other words,  
8 you would solve your problem, as I understand it, that  
9 if you simply eliminated all tax and the corporate  
10 tax on any earnings, and made it zero.

11 MR. TAMAKI: One of the problems in suggesting  
12 that there should be no tax at all is that it is almost  
13 universally accepted that there should be some tax  
14 on dividends. But I do not know whether it would be  
15 acceptable to have a system whereby no tax at all was  
16 payable on dividends. Afterall, people can invest in  
17 shares in Canadian companies and live on those  
18 investments and returns from the investments. Perhaps  
19 some tax should be paid on those.

20 MR. COYNE: Do you relate the 15 per cent  
21 rate that you have recommended in any way to the rates  
22 of tax which apply on other types of income? Is there  
23 any relationship in your mind between the 15 per cent  
24 rate, or is it purely an arbitrary or educated choice?

25 MR. TAMAKI: Not completely, because, afterall,  
26 the 15 per cent rate is considered to be good for non-  
27 residents.

28 MR. THOM: It was the rate chosen by the  
29 government when it passed section 95A.

30 MR. TAMAKI: The other special rates in the





1 Act range from 15 to 30 per cent, but normally they  
2 are 15 per cent.

3 MR. COYNE: So you are really regarding  
4 your proposal, as far as this aspect of it is concerned,  
5 as an extension of an existing pattern of 15 per cent  
6 rates?

7 MR. TAMAKI: I would say so, yes.

8 MR. COYNE: On this type of distribution  
9 in particular circumstances.

10 MR. TAMAKI: That is right.

11 MR. COYNE: Among the benefits which you refer  
12 to as possibly flowing from this you speak of the  
13 encouragement which a flat rate of 15 per cent would  
14 lend to the investment in Canadian equities. I put it  
15 to you that there would not be much encouragement given  
16 to those persons who were currently at a rate of less  
17 than 35 per cent, because they would in fact be paying  
18 more tax on their dividends than they are now.

19  
20 --

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2 MR. TAMAKI: Yes, that is true, but I  
3 do not know what volume of investments will be made  
4 by the people in that group.

5 MR. COYNE: No, I do not either.

6 MR. EDWARDS: I think, Mr. Coyne, our  
7 feeling was that the 15 per cent was a relatively  
8 low rate and would not discourage very many people.  
9 To get a dividend of a dollar and pay tax of 15 cents  
10 on it would not be much of a disincentive, and  
11 the complexities which would be created by permitting  
12 a reduction of that rate would more than offset  
13 the advantage of allowing the deduction.

14 COMMISSIONER BEAUVAIS: Mr. Edwards, unless  
15 they have a dividend income ~~over~~ \$10,000, actually  
16 they do not pay any income tax on that. According  
17 to your suggestion there would be no refund such  
18 as was proposed by the special committee. Taking  
19 for example a taxpayer with a revenue of \$12,000  
20 from dividends, actually a married man does not  
21 pay a cent of income tax. ~~According~~ to your  
22 suggestion, he would pay \$2,170.

23 I presume it is the intention of the  
24 government to induce the small investors, so then  
25 I presume the small investors would be within,  
26 or partly within, that category. Do you not think  
27 if you do not give them a refund under \$10,000  
28 it would tend to discourage them from buying equity?

29 MR. EDWARDS: I think it might discourage  
30 some people who have a very large dividend income  
and very little other income. I think that would  
be a relatively small number of people. Of course,  
under the present system, when they have the 20 per







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2 cent dividend credit, as you indicate, a taxpayer  
3 with no other income can receive a fairly sizeable  
4 dividend income without paying tax, but maybe in  
5 those circumstances the individual should pay some  
6 tax.

7 COMMISSIONER BEAUVAIS: At that level  
8 of \$12,000 maybe, but I am covering from \$1,000  
9 to \$12,000. You have a small fellow earning  
10 \$3,000 or \$4,000. Why would you not recommend  
11 a refund under \$10,000?

12 MR. TAMAKI: If you are looking at me,  
13 Mr. Beauvais, I should say that I was only one  
14 member of this committee, so perhaps someone  
15 else can answer that question.

16 MR. THOM: One reason, Mr. Beauvais,  
17 maybe at that particular income level he probably  
18 is not a very heavy investor and the amount of  
19 dividend tax he pays at a 15 per cent rate is  
20 not very important anyway, whereas the administrative  
21 problem might be.

22 COMMISSIONER BEAUVAIS: It is important  
23 if you see the tax that this man would have to pay  
24 in relation to what he has to pay today. There is  
25 quite a difference between zero and \$2,000.

26 MR. THOM: It is quite substantial to  
27 that particular investor in that range.

28 COMMISSIONER BEAUVAIS: There is another  
29 point, too. You were talking about equity. \$100  
30 earned by a company in the hands of the recipient  
of the same dividend flowing from that \$100 will  
amount to 59.80 per cent. I assume the company  
would pay 52 per cent. 15 per cent on the balance





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3 would bring the effective rate you would have to  
4 pay on that \$100 earned by his company to 59.80,  
5 and that is quite sizeable compared with \$100  
6 earned by an unincorporated concern. The rate  
7 is quite high. I am talking about the question  
8 of equity that was raised a few minutes ago.

9 MR. EDWARDS: Mr. Beauvais, take an  
10 individual with a dividend income of \$10,000,  
11 assuming that is a 5 per cent return on the  
12 investments, the individual would presumably own  
13 securities having a value of about \$200,000. In  
14 those circumstances quite likely the changes in  
15 capital value of the investment would likely be  
16 much greater than the dividends. But in any  
17 event, a tax of \$1,500 would not seem to be unduly  
18 onerous, I would think, in those circumstances.  
19 However, we are getting into a question of policy,  
20 on which we said we were not going to comment.

21 THE CHAIRMAN: Mr. Coyne, there is one  
22 thing that they have said which concerns me a good  
23 deal. They have likened the 15 per cent with-  
24 holding tax to the non-resident tax. I think it  
25 means that the resident in receipt of dividends  
26 would pay the same tax as the non-resident in  
27 receipt of dividends.

28 I have always thought that there is  
29 more of a responsibility upon the residents of  
30 a country to pay taxes than there is on non-residents,  
that residents should pay more taxes than non-  
residents. It seems to me that services the







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3 national government provides for us are essential  
4 to the people who live within the country, and to  
5 some extent to the people who live outside the  
6 country and have investments in the country. I  
7 agree the investments have to be protected and  
8 that that means service, and so on, but to my way  
9 of thinking that should be a much smaller charge  
10 than the charge with regard to all of us who are  
11 Canadians. I cannot see the suggestion that the  
12 Canadian rate of tax should be the same as the  
13 non-resident rate of tax.

14 MR. TAMAKI: One of the things that a  
15 lot of people have pointed out is that the actual  
16 amount of revenue collected from Canadian resident  
17 individuals on dividend incomes is insignificant --  
18 \$50 million, I think, is one estimate. In  
19 relation to the total budget, that is insignificant.  
20 The 15 per cent tax, certainly without exception,  
21 I think, will raise a lot more revenue from non-  
22 residents. I think this might be a consideration.

23 It is true that individual residents  
24 may pay more or less than other residents, or  
25 individual residents may pay more or less than  
26 non-residents, but in the total picture there will  
27 probably be more revenue resulting from a flat  
28 15 per cent withholding tax.

29 THE CHAIRMAN: Yes, I concede that, but  
30 I do not think you quite meet the point which I  
raise. You are saying that even if I may be  
correct, the government has to take some of that in the





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3 long run?

4 MR. TAMAKI: Yes.

5 THE CHAIRMAN: I am concerned with standing  
6 side by side a person who is not a resident of  
7 Canada and who says to me, "I pay as much tax to  
8 Canada as you pay." I do not think we can fairly  
9 meet that charge.

10 MR. HULBIG: You do not pay as much.  
11 On the \$10,000 you do not pay any as a resident  
12 of Canada.

13 THE CHAIRMAN: Do I not?

14 MR. HULBIG: Assuming you have no other  
15 income. If you have other income, you will pay  
16 substantially higher than non-residents.

17 MR. EDWARDS: One of the reasons for  
18 which we made it a flat 15 per cent was that if  
19 you said the upper limit may be 15, but it may be  
20 less than that, you would be open to the charge  
21 that you were having it all one way, but if you had  
22 a flat 15 per cent I think, as Mr. Tamaki said, the  
23 revenue would probably be at least as great or  
24 greater than it is from the rates that are now  
25 applicable.

26 MR. COYNE: Is it really valid to compare  
27 rates of tax paid by residents and paid by non-  
28 residents on investment incomes and say that  
29 because the rate paid by residents may be greater,  
30 they suffer discrimination as compared with non-  
residents? I would not have thought so. I do not  
think there is any relation whatsoever between what





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3 taxes non-residents pay to a foreign jurisdiction  
4 as compared to what residents pay to their own  
5 jurisdiction from a point of view of discrimination.

6 MR. EDWARDS: I think that is really  
7 a question of policy, but one reason for having  
8 the same rate -- and I grant you it is not the  
9 same rate now in view of the changes in non-resident  
10 rates -- but if you have the same rate applicable  
11 to all citizens, no matter to whom they are paid,  
12 it certainly makes for simplicity in the system  
13 regardless of the question of policy as to which  
14 should pay the higher rates.

15 MR. THOM: It is probably, too, that  
16 you are asking us questions which we have not  
17 the capacity to answer. We are amateur tax  
18 policy people and we do not pretend to be economists.

19 As practitioners in the tax field, we  
20 look at it from the viewpoint that we have a  
21 designated surplus which fouls up reasonable  
22 business deals every time you turn around. We  
23 have a series of complicated sections in the act  
24 which make business transactions difficult and  
25 which make the law hard to understand. From  
26 that point of view, the simplicity of this tax  
27 recommended itself to us. It also seemed, prima  
28 facie, to have a degree of equity in that every  
29 dividend will pay tax and that the many evasions  
30 which are now practised -- which were practised  
until 1938 (a) -- will have no further place with  
the possibility of removing this discretionary  
power which we find objectionable, that the







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3 advantages of an effective and simple tax answer  
4 quite a few of the questions which turn on economic  
5 benefit and equity.

6 MR. COYNE: I take it from some of your  
7 answers that one of the reasons why you recommend  
8 against there being any refund or credit for those  
9 persons in the lower income brackets is the very  
10 reason you mention that in your view it should  
11 be simple, it should apply to all dividends across  
the board without exception.

12 I would like to ask you this question  
13 arising out of your paragraph 1 of your recommendation.  
14 You recommend that the present method of taxing  
15 dividends be completely abolished and be replaced  
16 by a flat withholding tax of 15 per cent on all  
17 dividends except dividends paid to a parent company  
18 by a subsidiary paid out of the latter's earnings  
19 while it was a subsidiary. Why would you exclude  
20 that type of dividend from this otherwise all  
embracing tax?

21 MR. TAMAKI: We had a great deal of  
22 discussion on this point. There were two views.  
23 One view would be to say, "Let's have a withholding  
24 tax of 15 per cent or 10 per cent, or whatever  
25 it may be, and tax the first movement and forget  
26 about it afterwards." That is one view. The  
27 other view would be to say, "It is not fair to do  
28 that because then you are penalizing a company  
29 with a subsidiary, because a company with a  
30 subsidiary will not be able to pay out dividends  
to a parent company without this tax.





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3 I do not myself think that this should  
4 affect the principle, whether or not there should  
5 be withholding tax, and this is a method, maybe  
6 an exception to the rule, a question of policy.  
7 It may be found that it is better to have one  
8 universal rule and no exceptions because once  
9 we have this rule and we say the subsidiary's  
10 earnings after it became a subsidiary can be paid  
11 out tax free. Well, then we have a return, if  
12 you like, to the idea of a designated surplus.  
13 We have to consider what happens to surpluses.  
14 We have to determine when earnings were earned  
after the company became a subsidiary.

15 MR. EDWARDS: I think the only reason  
16 we put that in was because we considered it might  
17 be an objection to the tax on intercompany dividends,  
18 that it would apply to this type of dividend that  
was not payable previously.

19 MR. COYNE: Both points of view have  
20 been put to us. I just question whether there  
21 is an element of unfairness. Surely if the tax  
22 were imposed upon the subsidiary/parent dividend  
23 it is only a tax to the extent that the parent  
24 is intent upon accumulating rather than distributing  
25 income, because if it passes the fund straight on  
26 to its shareholders, or any portion of it greater  
27 than 15 per cent, there is not going to be any  
net tax anyway.

28 MR. EDWARDS: You might have the  
29 situation, for example, where the parent had a loss  
30 and the subsidiary has a profit, and it might be







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3 desired to bring the surplus up from the subsidiary  
4 for that reason. But maybe if that is an  
5 exception at all, which may be open to debate,  
6 perhaps it should be confined for example to a  
7 wholly owned subsidiary, or to a subsidiary that  
8 is very close to being wholly owned, and to earnings  
9 in years when it was in that position for a  
complete year.

10 MR. COYNE: I wonder if I could ask  
11 you a question on your comments right at the top  
12 of page 60, on the affects of change of residence  
13 of the corporation in relation to this problem.

14 COMMISSIONER GRANT: Are you leaving  
15 the 15 per cent?

16 MR. COYNE: Yes.

17 COMMISSIONER GRANT: Then I have a  
question to ask.

18 I am disturbed about ~~this~~ field of abuse  
19 this might open up, and perhaps it can be prevented.  
20 Take the case where one man, or a very small group,  
21 say a family group, controls a corporation which  
22 is quite a thriving corporation and he lives on  
23 a scale of, say, \$15,000 a year. He says, "Now  
24 I am not going to take a salary at all; I am going  
25 to take all my money out in the form of a dividend."  
26 He does that and he gets by on a tax of 15 per cent.  
27 On the other hand, he might be in a position to  
28 put that into operation, but he might have enough  
29 control in the company or enough influence with  
30 his friends to vote a preferred issue and he says,





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3 "I own stocks in American companies, in foreign  
4 companies; I own bonds; I own real estate. Why  
5 should I be bothered with this kind of thing any  
6 more? I will sell all this and I will buy the  
7 preferred stocks of my own company."

8 Now I appreciate the fact that you have  
9 not in outlining your legislation cited it as being  
10 the alpha to omega of all legislation, ~~and legislation~~  
11 but are you concerned, for instance, Mr. Tamaki,  
12 with such a situation as that? Do you think  
13 it would lead to an abuse which could be worse  
14 than the evasion which is now practised in  
15 distributions?  
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1 MR. TAMAKI: Well, the company will be paying  
2 corporate tax on its income and this is in a sense a  
3 second tax; particularly in a closely held company  
4 from a business point of view. It is all one business,  
5 and there doesn't seem to be any particular reason why  
6 there should be a second tax on graduated rates, I think,  
7 on the distribution of profits which are earned by the  
8 company who had paid corporate tax.

9 I think in your example the company would pay  
10 corporate tax which will go as high as 50 per cent. I  
11 would be inclined to say 15 per cent on the balance  
12 should be sufficient.

13 MR. COYNE: You are discussing corporate  
14 rates, I know. You make that clear at the very  
15 beginning. We have to consider the corporate tax rate.

16 COMMISSIONER GRANT: This is all related to  
17 that.

18 THE CHAIRMAN: But the salary which was  
19 reducing the company's tax before is now replaced by  
20 a dividend on Mr. Grant's thesis so therefore the  
21 company's earnings would increase and thereby more  
22 company tax and there would be less tax paid by the  
23 individual.

24 MR. TAMAKI: That is right.

25 THE CHAIRMAN: I think your reply is that one  
26 is offset by the additional taxes to the other. Is that  
27 correct?

28 MR. TAMAKI: Yes that is right.

29 MR. EDWARDS: I think on this point it seemed  
30 to us that obviously any solution to this problem







1 depends on what is done with the corporation tax to give  
2 the effect that we have. Assuming we have the present  
3 form of corporate taxation and exemption of inter-  
4 company dividends, the only practical way of dealing with  
5 the problem and overcoming all this designated surplus  
6 problem is by having a flat rate.

7 THE CHAIRMAN: We accept your recommendations  
8 based on the law as it now stands subject to the  
9 recommendations you are making. If you change the law,  
10 you must replace that, otherwise your recommendation  
11 would be meaningless.

12 MR. THOM: If we were to suggest there should  
13 be no dividend tax, the Globe and Mail would probably  
14 write an editorial about it so we have to live within this  
15 context.

16 COMMISSIONER GRANT: Probably will anyway.

17 MR. COYNE: On this point with which you  
18 deal at the top of page 60, having to do with the  
19 effect of residence of the corporation and the  
20 possibility of abuse, you recommend two alternative  
21 methods of dealing with it, each of them might be  
22 considered somewhat cumbersome. Another method of  
23 dealing with this problem, which has been put to us, is  
24 quite a simple one and simply to the effect that  
25 if a corporation changes its residence and becomes non-  
26 resident, that even in itself it shall be deemed to  
27 evasion of distribution of whatever surplus there may  
28 be and it would pay the 15 per cent tax on the notional  
29 distribution at that time. Have you given consideration  
30 to that sort of solution at all or would you have any





1 comment to offer on it.

2 MR. TAMAKI: One of the problems would be to  
3 determine exactly when such corporation became non-  
4 resident because presumably if there is a tax to be  
5 paid that tax would have to be paid at the time or at  
6 least in the tax year in which the subject became non-  
7 resident.

8 MR. COYNE: Do you envisage this as being  
9 a sort of administrative problem, Mr. Tamaki, by  
10 identifying the change of residence.

11 MR. TAMAKI: I think it might be. Under our  
12 proposal we suggest that they, on the winding up of the  
13 non-resident company or payment of the stock dividend,  
14 there will be a tax. You see, there is some positive  
15 step taken by the company before the tax liability  
16 occurs.

17 Now, I am not suggesting that the other  
18 solution is not workable but I can see some problems  
19 in determining when exactly the company became non-  
20 resident.

21 MR. COYNE: Even under your proposals, is  
22 there any jurisdictional problem there, that is, of  
23 enforcement, if a company has successfully become non-  
24 resident? Is there a problem there of collection no  
25 matter by what method you may assess the taxes.

26 MR. TAMAKI: Yes, I think so. Some problem  
27 exists to it.

28 MR. COYNE: And probably would be under what-  
29 ever system were adopted.

30 MR. THOM: Corporations that come into Canada







1 as foreign corporations today and do not distribute  
2 all their Canadian profits are just beyond the reach of  
3 the Canadian government. That is all there is to it.

4 Canadian corporations owned by Canadian who  
5 try to make themselves non-resident by various  
6 deceptive techniques, the law cannot reach because they  
7 are behaving properly. People can always by deceit  
8 and fraud avoid taxes but you know eventually one  
9 expects these Canadian companies would have to come to  
10 the day of reckoning.

11 MR. COYNE: Perhaps we could return to 177 and  
12 178.

13 MR. THOM: Yes, that might improve the  
14 situation.

15 MR. COYNE: There might be a perfectly proper  
16 reason for changing residence. It is not only a  
17 question of devious ---

18 MR. THOM: There is also the example if the  
19 question of residence were dealt with through the  
20 Canadian point of view at the present time simply by  
21 adopting certain jurisdiction in the United Kingdom,  
22 which has maintained a sort of precedent. It is not  
23 Canadian. We have dealt with the matter of the initial  
24 statute. It might be the whole question of residence  
25 should be covered if corporations for tax purposes ---

26 MR. EATON: Mr. Thom has fallen into using  
27 the word "properly."

28 MR. COYNE: You are not making any specific  
29 recommendations as to the law relating to the  
30 residence of corporations.





1 MR. THOM: No.

2 MR. EATON: I wonder whether it is necessarily  
3 the view of the Association or all of us here that it is  
4 improper to incorporate off-shore companies to minimize  
5 tax. I wanted to make that reservation. I made it.

6 MR. COYNE: Mr. Chairman, that finishes  
7 everything I wanted to ask on this section. We have  
8 a choice of moving forward, subject to any questions  
9 from the Board.

10 COMMISSIONER PERRY: I am a little bit  
11 concerned about the fact regarding this proposal that  
12 the Tax Foundation made in Vancouver -- a rather  
13 brilliant paper was delivered in which some weaknesses  
14 of this proposal were pointed out. The Chartered  
15 Accountants in their brief had also some changes which  
16 they thought should be made. You have some more here.  
17 I don't know whether this may all be the same thing.  
18 They may be somewhat different. The real question is  
19 whether these are matters of guilding what is a lily  
20 or whether they are attempts to deal with some fairly  
21 fundamental weakness in the proposal which would invite  
22 a series of patch-up provisions such as we have had  
23 for the last five or ten years. Is anyone willing  
24 to make an observation on that comment.

25 MR. THOM: I heard the paper about which you  
26 refer, Mr. Perry. I think it is a matter of guilding  
27 what seems to be a lily. There are certain weaknesses.  
28 Our suggestions are very similar to those put forward  
29 to you by the Chartered Accountants. I do not know  
30 whether we have the same attitude towards the same





1 avoiding techniques. I think the basic idea of a  
2 withholding tax on dividends is right whatever it may  
3 be as looked upon ---

4 COMMISSIONER PERRY: You are not afraid that  
5 the kind of dividend surplus stripping opportunities  
6 that you can see today these people can see a year from  
7 now and that we will be back in a hassle of trying to  
8 catch up with what is going on next year.

9 MR. EDWARDS: I don't think we can guarantee,  
10 Mr. Perry, that there would not be some possible other  
11 loophole we have not foreseen, but as far as we can  
12 see, there would not be any significant ones.

13 COMMISSIONER PERRY: This is what the men in  
14 the Department of Justice have been saying for some time  
15 now.

16 MR. EATON: They are not as objective as we  
17 are.

18 COMMISSIONER BEAUVAIS: It is pretty hard  
19 to find something that would be 100 per cent foolproof  
20 anyway.

21 MR. HULBIG: The question is is this system  
22 better than the one we have and to what degree is it  
23 better?

24 THE CHAIRMAN: I would not accept this as a  
25 standard of measurement at all. I suppose, being  
26 lawyers, you have taken all the twenty different ways  
27 of stripping now and endeavoured to find out whether  
28 this takes care of them. You have probably found it  
29 has not done it absolutely completely but it it as  
30 close to it as you can get.







1 MR. EDWARDS: I think the basic proposal  
2 overcomes a very large majority of the present methods  
3 of stripping surplus and these other provisions are  
4 designed to deal with other possible methods that we  
5 and others we talked to can think of that were not  
6 overcome by the basic proposal.

7 MR. THOM: Of course, there is one enormous  
8 weakness, if you can call it that in the taxation of  
9 undistributed profits.. That is the matter of selling  
10 your company for its share value and distributing your  
11 profits along with capital. As long as we have no  
12 capital gains tax, that is basic.

13 THE CHAIRMAN: Well, cannot we say as long as  
14 we tax distributed and undistributed profits at the same  
15 high rate, because all countries do it.

16 MR. THOM: No.

17 MR. COYNE: Mr. Chairman, we have the option  
18 of proceeding with the brief on page 61 or going back  
19 to where we were at the beginning of the brief dealing  
20 with computation of income.

21 THE CHAIRMAN: I think we might as well go  
22 back.

23 MR. COYNE: Then, we are at page 45 and the  
24 first subject that you deal with is headed "Income and  
25 Capital Gains" which contains a brief reference to  
26 the problem of capital gains tax. I don't know whether  
27 you want to say very much about capital gains tax or  
28 whether the Association will expand on its reason for  
29 not recommending it. The only reason to which you  
30 really refer here is that you suspect it may not produce





1 a great amount of revenue; the inference being if it  
2 is not really a revenue producer it should not be  
3 adopted. . Curiously enough or perhaps coincidentally  
4 much the same view was expressed to us yesterday  
5 by the Canadian Labour Congress on the same subject.

6 THE CHAIRMAN: They were collaborating.

7 MR. COYNE: Have you any comment of any kind  
8 to make on the capital gains tax beyond the brief  
9 mention here.

10 MR. HULBIG: I don't think we have, sir.

11 THE CHAIRMAN: That is the unanimous view of  
12 your committee, Mr. Hulbig, I suspect.

13 MR. HULBIG: Well, it is really the  
14 Association. I think the individual members have  
15 views and perhaps they may have another method of  
16 expressing them in an informal way. I don't know what  
17 your procedure is here.

18 THE CHAIRMAN: I have one in mind.

19 MR. HULBIG: As an Association, I don't think  
20 we can say very much more than we have.

21 THE CHAIRMAN: Well, might we ask Mr. Hulbig  
22 or might I whether when you are talking about capital  
23 gains here you have regards to any distinction -- you  
24 must have -- as between speculative profits and capital  
25 gains and whether you think the law has satisfactorily  
26 distinguished between the two, and if not, what, if  
27 anything, should be done about it? I have particularly  
28 asked that question because I am very much interested  
29 in it.

30 I find many countries impose taxes on







1 speculative profits. The U.K., for instance, has a  
2 tax. It has nothing to do with the capital gains  
3 whatsoever. Most of the European countries do the  
4 same thing and they measure speculative profits in  
5 different ways.

6 Sweden has perhaps got the most interesting  
7 way. It depends on the length of time you hold the  
8 asset. The tax declines until after X number of years  
9 there is not any at all; but time is a test in most  
10 of these countries. Now, it may be we don't need anything  
11 of this kind in Canada. The U.K. law is not  
12 dissimilar from ours and yet a great many people in  
13 their government to whom we spoke did not believe that  
14 they could properly tax speculative gains without  
15 amending the law and then they did amend the law --  
16 not that they hope to get worthwhile revenue out of it  
17 because they felt it was grossly unfair and left some  
18 of their taxpayers scot free who simply earned their  
19 living by speculation.

20 Now, it has been represented to us that we  
21 in Canada do not properly tax speculation in securities.  
22 We have probably done not too badly with properties  
23 but the people who know tell us we have not progressed  
24 very far with securities. Assuming that is correct,  
25 I do not suppose you have any special knowledge of  
26 that, assuming that is correct, is the law good enough  
27 to take care of it, do you think?

28 MR. HULBIG: I believe so. There is nothing  
29 in the law as it appears which would exclude this.  
30 It is, as far as we understand it, functioning well.





1 No attempt has been made to tax them.

2 THE CHAIRMAN: The U.K. did not believe their  
3 law was good enough.

4 MR. EATON: It is a matter more of  
5 administrative mechanics than the law. Administrative  
6 policy, if you like.

7 THE CHAIRMAN: In your deliberations you did  
8 not consider that the time test would be useful itself,  
9 I gather.

10 MR. HULBIG: We spent a good deal of time  
11 considering this, as a matter of fact.

12 THE CHAIRMAN: I did not mean the test of your  
13 own time.

14 MR. HULBIG: It was quite a testing time too.

15 THE CHAIRMAN: Did you judge the merits of  
16 your recommendations by the length of time you spent  
17 on them?

18 MR. HULBIG: No. We did have a proposition  
19 put very much along these lines which Mr. Edwards  
20 developed and it was not found that -- it did not find  
21 favour with the Association. We did, as a result,  
22 consider something very similar to the situation  
23 described in Sweden and I think perhaps some of the  
24 members of the Committee feel this would be certainly  
25 worthy of consideration.

26 THE CHAIRMAN: That is interesting. Nobody  
27 has come forward, I don't think, so far and recommended  
28 that the present law be changed to insert a time test,  
29 if you can call it that but I think several groups  
30 have given consideration to it, like yourselves.





1 MR. HULBIG: As far as taxation of securities  
2 were concerned, we considered this in the line of  
3 policy more than anything else as we have over the  
4 years. We adopt a rather hands-off attitude to  
5 this.

6 THE CHAIRMAN: Yes, well, I carefully avoided  
7 asking you questions on that. I asked you if you  
8 think the law is good enough and you have replied you  
9 think it is. Anything else on that section?

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1 MR. COYNE: Then the next section deals with  
2 the deduction of costs and expenses, on which you make  
3 a series of interesting comments and recommendations.  
4 Your principal recommendations, if I may paraphrase  
5 slightly, are that section 12(1)(a) be repealed; that  
6 the cost of all capital assets which depreciate or  
7 diminish in value or utility through use or passage of  
8 time should be neither deductible nor subject to  
9 capital allowance; but that all other business expenses  
10 in the broadest sense not being unreasonable should  
11 be deductible when laid out or incurred.

12 In introducing these recommendations you list  
13 a number of examples of expenditures which, under  
14 today's rules, are neither deductible or depreciable.  
15 I think the inference there, if it is not expressly  
16 stated is that under your proposed rules these  
17 particular expenditures would be deductible. I wonder  
18 if we could just have a look at one or two of them,  
19 or perhaps it will be possible to deal with them  
20 generally.

21 Most of the expenditures which you have listed  
22 have in one sense or another a capital aspect to them.  
23 For example, in Example No. 1 on page 47, a gondola in  
24 a hockey arena is certainly a capital asset which  
25 presumably depreciates in value or utility through use  
26 or passage of time; but as was held by the Tax Appeal  
27 Board in the case involved it was not owned by the  
28 taxpayer, and therefore he was not entitled to capital  
29 cost allowance. I take it that under your scheme of  
30 things the cost to the taxpayer in that case would be





1 deductible in the year incurred as a business expense.

2 Is that correct?

3 MR. EDWARDS: I think, Mr. Coyne, it might well  
4 be depreciable. We have not been specific in saying  
5 which of these items should be deductible and which  
6 should be depreciable. We have said that all business  
7 costs not otherwise specifically provided for be  
8 deductible unless prohibited for one of the reasons  
9 mentioned, or that capital cost allowances in respect  
10 thereof are deductible. It might be that this would  
11 be one type of expenditure which would be designated in  
12 regulations as being subject to capital cost allowances.

13 MR. COYNE: On page 49, Mr. Edwards, from  
14 where you are reading, paragraph (a) at the top of the  
15 page speaks of expenditures to acquire capital assets  
16 which depreciate or diminish in value or utility. The  
17 point at issue in the Saskatoon Community Broadcasting  
18 Company case was not as to whether or not it was a  
19 capital asset which would normally be depreciable, but  
20 simply the fact that the taxpayer did not own it.

21 COMMISSIONER GRANT: He built it but it became  
22 the property of the arena.

23 MR. COYNE: Of the owner of the arena, yes.  
24 He laid out the cost, but the ownership of the asset  
25 which was produced as a result of this expenditure  
26 rested in somebody else. I think the same principle  
27 may be involved in one or two of your other examples,  
28 but in any event I think that is clearly the case in  
29 that instance. How would that type of cost be  
30 affected by your general recommendations here?







1 MR. EDWARDS: I do not think that the  
2 paragraphs (a), (b) and (c) at the top of page 49 were  
3 intended to be read like a statutory provision. We did  
4 say "to acquire capital assets", but these would be  
5 expenditures on capital assets which diminish or  
6 depreciate in value or utility through use or the  
7 passage of time. Although we said "to acquire", I do  
8 not think we meant "to acquire legal ownership"  
9 necessarily. Our main point is that if it is a proper  
10 matter for capital cost allowances, then capital cost  
11 allowances should be allowed. If it is not a proper  
12 matter for capital cost allowances, then it should be  
13 deductible. Unless it falls within one of the  
14 categories, such as land or goodwill or personal living  
15 expenses, it should be prohibited altogether.

16 MR. COYNE: In other words, dealing with this  
17 particular aspect you contemplate that the regulations  
18 under and pursuant to Section 11 of the Act would permit  
19 the taking of capital cost allowances for capital costs  
20 even in respect of such costs which did not give rise  
21 to property in the hands of the taxpayer. Would you  
22 do this through a special class? I am a little  
23 uncertain as to how the mechanics of such a scheme might  
24 be worked out.

25 MR. EDWARDS: I am not sure whether we  
26 actually discussed this particular item as to how it  
27 would be dealt with. One of the problems in connection  
28 with it is that if the taxpayer does not own it and  
29 has no leasehold rights with respect to the property,  
30 then perhaps it should be an expense, because he could





1 be kicked out of the arena the next day presumably. If  
2 he had any continuing right to use it in the arena,  
3 presumably it should be depreciable over the period in  
4 which he has that right; but if he pays for the gondola  
5 and it immediately becomes the property of the arena  
6 and the taxpayer was expelled from the arena the next  
7 day, then perhaps it should be deductible.

8 MR. COYNE: I suppose the way in which it  
9 would be treated in the accounts of the arena might well  
10 be dependent upon the circumstances to which you refer.

11 MR. EDWARDS: Yes.

12 MR. COYNE: Take the case, which is No. 6  
13 on the list, without dealing with it in detail, where  
14 you refer to travelling expenses of a taxpayer and  
15 his employee incurred on a trip made to acquire  
16 knowledge of a particular technique. Presumably the  
17 knowledge of a particular technique would be a capital  
18 asset, and also, I should have thought, one which would  
19 not diminish or depreciate in value or utility through  
20 use or the passage of time. How would an expenditure  
21 of that kind fit into your scheme of things?

22 MR. EDWARDS: Well, I would think that  
23 certainly there may be many current expenses which  
24 technically do not diminish in value or utility through  
25 use or passage of time. But I think our feeling is  
26 that it would be a current expense and is incurred  
27 during the course of the taxpayer's business. Of  
28 course, education costs are ordinarily not deductible,  
29 but I think in the case of a person in business who  
30 takes a special course relating to that business, which





1 knowledge might be obsolete within a year -- it may do  
2 him some good for many years even though it is obsolete  
3 within a year -- should be deductible as a current  
4 expense.

5 MR. COYNE: I suppose that the short answer  
6 to that is that it depends on the particular  
7 circumstances surrounding the nature of the learning  
8 and the circumstances in which it was acquired as to  
9 whether you regarded it as capital or current.

10 MR. LEMAY: Much of that learning could be  
11 treated in the same way as research, which is done by  
12 companies and which are current expenses. At the same  
13 time it is improving the earning capacity of the  
14 company by creating new assets, if you consider that  
15 learning as an asset.

16 MR. EATON: There is the difficult problem,  
17 as you know, Mr. Coyne, of where to draw the line  
18 under our present jurisprudence between payment of a  
19 capital expense and a non-capital expense in such  
20 tests as enduring benefit to the trade, and so on.  
21 This is not too clearly defined in my view. It seems  
22 to me that we have the same problem here.

23 COMMISSIONER PERRY: It sounds as though  
24 you are giving a rehearsal of some of the jurisprudence.  
25 You run into the same sort of issue as what is an  
26 enduring benefit.

27 MR. EATON: Exactly. There can be, for  
28 example, the lawyer's refresher course to bring him  
29 up-to-date with what he should know anyway, which I  
30 think is a current expense, compared with a friend







1 of mine who went down to the United States to learn  
2 a new way to brew beer, and every since then has been  
3 brewing beer in the new way. That might be a little  
4 more enduring.

5 MR. THOM: We are concerned largely with  
6 the inconsistency of the statute. If you have a  
7 leasehold business you can capitalize and depreciate  
8 your improvements. In the mining and the oil business  
9 you write-off your capital expenses as pre-production  
10 expenses right away. That is the way that their  
11 expenses have constantly increased. If you have the  
12 power in a particular industry you do not deduct  
13 expenses. There is no order, rhyme or reason to the  
14 deductibility of capital expenditure. All we have is  
15 the general principle that a mode should be found  
16 within the alternative methods, except for things  
17 like land which might always have a good will which  
18 is the present value of future income. If you deduct  
19 that then you play havoc with the taxing end of it.  
20 We do not see any inconsistency in the refusal of the  
21 allowance of expenses.

22 MR. COYNE: You are really couching your  
23 recommendations in general. Perhaps that is not quite  
24 accurate. You have some quite specific recommendations,  
25 but you are only dealing with the general aspects of  
26 the problem.

27 MR. THOM: My friend Mr. Goodman has just  
28 reminded me of a case concerning a plant which had a  
29 power line connected to it, and they put in a special  
30 section into the Act. That is a pretty poor way of





1 doing it. You would have hundreds of special sections  
2 put into the Act to meet special cases, but that  
3 particular industry had enough influence to be able to  
4 have a special section to look after itself. It is  
5 most inconsistent with the general scheme of the Act  
6 as it now stands.

7 MR. EDWARDS: If you are a purist you might  
8 say that advertising expenses which are incurred to  
9 build up an image for a product is to acquire an  
10 enduring benefit; but normally advertising expenses are  
11 deductible. What we are really saying, I think, is  
12 that these are some guide lines as to how the lines  
13 might be drawn between deductible and depreciable  
14 expenses. But our main thesis is that every bona  
15 fide business expense should be either deductible or  
16 depreciable, and exactly where the line between those  
17 two categories is drawn is a matter which would  
18 obviously have to be worked out in some detail.

19 MR. COYNE: But the nothings should be  
20 eliminated.

21 MR. EDWARDS: Yes.

22 COMMISSIONER PERRY: Except for some nothings  
23 like land and goodwill.

24 MR. COYNE: Yes.

25 COMMISSIONER GRANT: Why would a farmer,  
26 say, spend money to reclaim land or to take bush off  
27 a piece of his land so that he can put it in to  
28 production? It certainly seems to me that that is an  
29 expenditure made to earn income. I suppose it goes  
30 into the value of the land and eventually he will recapture







1 it on the sale of the land. But he may never do that.

2 MR. EDWARDS: It is an expenditure which should  
3 be allowed.

4 MR. THOM: Yes, it certainly should.

5 MR. COYNE: Does that not suggest that among  
6 the out-dated concepts you refer to here is the legal  
7 concept of land per se? It might be suggested that  
8 there is nothing more out-dated than the word "land"  
9 in its legal meaning as incorporating all types of  
10 interests in land, and improvements in land, such as  
11 Mr. Grant suggested. I mean all types of easements,  
12 incorporeal heraditaments and the like. Is it likely  
13 that there might be some scope for more clearly  
14 defining what we really mean when we use the word  
15 "land", eliminating other types of interest in land  
16 which are really related to quite different assets or  
17 forms of expenditure?

18 MR. EDWARDS: For example, landscaping does  
19 not really create any permanent improvement in the  
20 value of the land, but it certainly, under present  
21 cases, has been disallowed on that ground.

22 MR. COYNE: Or the easement which a pipeline  
23 company needs in order to lay pipe under a farmer's  
24 land. That has no value.

25 MR. THOM: Timber limits raise the value of  
26 land in some cases quite a bit, and the regulations  
27 regarding timber limits are quite peculiar in that  
28 regard.

29 MR. COYNE: I think that is all I have on  
30 that section, Mr. Chairman.





1 COMMISSIONER PERRY: This point has been  
2 raised a good many times before when this proposition  
3 has been put. We were wondering how you expect a  
4 corporation or business ever to be able to claim that  
5 a capital receipt is exempt from tax and all capital  
6 expenditures are to be allowed.

7 MR. GOODMAN: Surely the answer to that is  
8 that if a company buys a machine, and after using it  
9 for a period of time sells it in excess of its  
10 costs, it makes a capital gain to the extent of excess  
11 over cost. Nevertheless, if they use the machine in  
12 process of production it is entitled to claim capital  
13 cost allowances against the cost of the machine. These  
14 two things are not inconsistent.

15 MR. EDWARDS: It seems to me, Mr. Perry, that  
16 the converse of a capital gain is a capital loss  
17 rather than a capital expenditure. In other words, the  
18 word "capital" leads to some confusion. The nature of  
19 the type of expense which has been disallowed on the  
20 ground that it is a capital expenditure is a different  
21 sort of thing that the capital gain realized on the  
22 sale of a piece of property. I think we certainly do  
23 not dispute the point that capital losses on the  
24 realization of property should be disallowed. But  
25 that is the converse of a capital gain, it seems to us.

26 COMMISSIONER PERRY: That is a well reasoned  
27 answer.

28 MR. THOM: Is it not also the case where  
29 expenditure has been written off by capital cost  
30 allowances it is brought back into income in the





1 disposition of property? To the extent that you sell  
2 your property for more than its original cost one  
3 could write that off to the depreciation in the  
4 dollar. or various other economic aspects, which could  
5 not be taxed on broad principles at all.

6 COMMISSIONER PERRY: Yes. If you were  
7 willing to push the capital cost recovery system to  
8 its extreme, you could even allow a deduction for  
9 land on the assumption that you would bring the proceeds  
10 back into the tax picture.

11 MR. THOM: You can push it more than that.  
12 In connection with oil rights you can at least deduct  
13 the cost of the oil rights under capital cost; but  
14 you have to bring in all the disposition value of the  
15 costs which were not deductible when you incurred them.

16 COMMISSIONER PERRY: You do not put it as  
17 strongly as did the oil industry!

18 THE CHAIRMAN: You can have a case for  
19 the protection of goodwill also which, under  
20 accounting theory, is a fair charge over a period of  
21 time. It is not expected to last forever. Many  
22 accountants would write it off.

23 MR. THOM: I said that we would leave  
24 questions like that to an accountant!

25 MR. COYNE: In the next section on averaging  
26 of income you recommend really a blanket option  
27 available to all individual taxpayers to average their  
28 income according to the block system. I would simply  
29 ask you whether you might not be concerned that this  
30 type of scheme would be subject to serious abuse. For







1 example, you have the problem of new income earners,  
2 persons entering the income earning class for the  
3 first time.

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2 MR. COYNE: You have the problems of  
3 retiring from active employment and thereby  
4 suffering a sharp reduction in income, people  
5 taking sabbatical years, for one reason and another.  
6 It has sometimes been suggested to us that any  
7 general averaging scheme to avoid these types  
8 of abuse should at least be subject to limitations.  
9 One suggestion, for example, was that averaging  
10 should only be permitted if there was a 100 per  
11 cent variation in income between the lowest year  
12 of the block and the highest year. A somewhat  
13 similar situation in the United States was that  
14 the variation should be 33 1/3 per cent.

15 When putting forward this recommendation,  
16 did you give any thought to the possible difficulties  
17 which it might give rise to in practice, perhaps  
18 along these lines?

19 MR. GOODMAN: Mr. Coyne, we did give  
20 some thought to that. The proposals which you  
21 suggest for avoiding the abuses by providing  
22 limitations on a percentage rule do not attack  
23 the problem of which you have spoken. The person  
24 who, having been a student for a number of years,  
25 hinders the field of income earning is in a position  
26 to exercise his right of averaging in the first  
27 few years to his advantage, because he earned no  
28 income at all in the first years. Similarly, when  
29 he leaves his active employment on retirement for  
30 a few years, he has a similar advantage. It is  
difficult to define the entrance to the income  
earning period and the exit from the income earning







1  
2 period in such a way as to provide restrictions  
3 of a meaningful nature for this averaging process.  
4 Our feeling was that we were quite content to  
5 leave it on an optional ~~block~~ averaging basis with  
6 the idea that people should be generally taxed  
7 on their income in much the same manner as though  
8 they received it fairly evenly over a period of  
9 years, and leave it go at that.

10 MR. COYNE: You have no ideas as to  
11 how this might affect the revenue in terms of  
12 revenue losses?

13 MR. GOODMAN: The only study that was  
14 made of this in Canada was by Professor Willis  
15 some years ago. His thought was that the primary  
16 difficulty with the present system, which does  
17 not permit averaging, is that people in the lowest  
18 income groups may lose the benefit of all their  
19 personal exemptions. This is referred to in  
20 the brief, and apparently this is the most sig-  
21 nificant tax loss from the taxpayer's point of view.  
22 If an averaging system were enacted, it would seem  
23 that this is where the relief would be given  
24 primarily, although the most spectacular forms  
25 of relief are given to people who, having earned  
26 a few thousand dollars a year for a number of years  
27 suddenly earn \$50,000 or \$100,000. In fact, the  
28 vast majority of persons who benefit would be  
29 the people who fluctuate around their exemption  
30 level.

MR. COYNE: Does the problem not only  
become acute, on the other hand, and therefore a





1  
2 problem at all, in the case of these windfall  
3 incomes, as compared with a very modest level of  
4 income generally?

5 MR. GOODMAN: Not necessarily. After  
6 all, what is acute to ourselves may not be acute  
7 to someone else, and certainly in the examples  
8 that are given at the bottom of page 50 an  
9 individual with personal deductions of \$3,000  
10 who earns \$1,500, \$3,000 and \$15,000 in three  
11 successive years has to pay \$330 in tax, which  
12 is \$110 per year. Had he received the same  
13 income equally over that period of time, he  
14 would pay \$28 a year. The difference in those  
15 figures is not large in dollar terms, perhaps  
16 to you and me, but it is very large to a person  
17 who is in that tax bracket.

18 COMMISSIONER PERRY: What are we trying  
19 to alleviate here? It seems to me this is the  
20 normal pattern of income growth. Is it the normal  
21 pattern we are trying to tax less severely or to  
22 give some alleviation in unusual cases?

23 MR. GOODMAN: Let us ~~reverse~~ and say  
24 it is \$15,000, \$3,000 and \$1,500.

25 COMMISSIONER PERRY: It is a little  
26 steeper than most, but certainly what a lot of  
27 people expect to see and do see.

28 THE CHAIRMAN: I think Mr. Goodman, the  
29 fact that it is growth and not shrinkage is purely  
30 accidental.

MR. GOODMAN: If the order is reversed,  
it would be a shrinkage.

COMMISSIONER PERRY: The kind of measure





1  
2 you envisage would be available to all people with  
3 a normal pattern of income growth?

4 MR. GOODMAN: That is right.

5 COMMISSIONER PERRY: And this is all  
6 right with you?

7 MR. GOODMAN: I think so.

8 COMMISSIONER PERRY: It would keep the  
9 administration very busy. It would not give  
much time for anything else.

10 MR. GOODMAN: It could be provided along  
11 the lines Mr. Coyne suggested, that is some  
12 percentage figure, that your tax must exceed by  
13 some percentage what it might otherwise be. It  
14 might be 110 per cent, as Professor Willis  
15 suggested, or it might be 133 1/3 per cent as  
16 in the American system. Surely some benefit  
17 should be given to a person who, because he  
18 earns a fluctuating income, pays substantially  
19 more tax than he would had he earned the same  
income over a period of time.

20 THE CHAIRMAN: I think we would all  
21 agree that something along the lines of averaging  
22 might be broadened from the present restricted  
23 application. I suppose whatever is done, from  
24 what I read in the paper, the computer will have  
indigestion anyhow.

25 MR. EDWARDS: Mr. Chairman, it must  
26 provide, for example, that in the first year and  
27 last year as the averaging period there must  
28 be ~~some~~ taxable income. That might be one restriction,  
29 for example, just thinking out loud.  
30







1  
2                   There is one point we did discuss.  
3       To avoid an undue number of averagings from an  
4       administrative standpoint, there must be some  
5       percentage saving of so much before the right to  
6       elect should arise.   But it seemed to us generally  
7       that the cases which Mr. Coyne described as abuses  
8       were deserving cases.

9                   THE CHAIRMAN:   How much more time can  
10          you give us?

11                  MR. HULBIG:   Some of us have to leave  
12          at ten after five, but the rest of us can stay  
13          after that.

14                  THE CHAIRMAN:   The main job will be done  
15          when we get to page 56, and then there may be very  
16          little to ask after that.

17                  MR. COYNE:    I think we could probably  
18          quite readily stop at five without doing injustice,  
19          on the basis that I think a good deal of the  
20          latter part contains specific recommendations  
21          in some matters of detail which are quite clear.

22                  MR. COYNE       I only have one general  
23          question on this next section dealing with what  
24          you call the cumulative taxation of income.

25                  As far as non-arm's length transactions  
26          dealt with in section 17 are concerned, and  
27          benefits to shareholders, dealt with in section 8,  
28          my question is simply why should they not be  
29          cumulative?   What is the objection?   Is it not  
30          really the intention of these sections to be  
31          cumulative in the sense that they are intended  
32          to deter taxpayers from doing something which,  
33          under the terms of the section, have tax consequences?





1  
2 MR. GOODMAN: The answer to that, Mr.  
3 Coyne, is that there is a sufficient punishment  
4 when one is reassessed for tax plus additional  
5 interest. Punishment beyond that is hardly  
6 required, particularly with the laws which are  
7 clear, or the facts may be capable of determination  
8 by reasonable people in different manners.

9 MR. COYNE: Might I just interrupt in  
10 this sense, Mr. Goodman. I put it to you that  
11 it is not a matter so much of punishment as  
12 deterrence. In other words, these sections of the  
13 Income Tax Act are actually designed to deter  
14 the sort of things arising with which the sections  
15 deal. They put people on notice, in effect,  
16 that these are types of transactions which are  
17 disapproved.

18 MR. GOODMAN: Let me give you an  
19 example, Mr. Coyne. If a shareholder sells to  
20 his company some property which it is subsequently  
21 discovered was sold at an overvaluation, a benefit  
22 is considered as having been conferred upon him  
23 by the company and this benefit, according to  
24 the Department of National Revenue, is taxable as  
25 income in his hands and is not increased as a  
26 dividend. This may arise as a result of bona  
27 fide disagreement as to what is the true value of  
28 the property.

29 The idea of deterring him from a  
30 transaction which may be a perfectly appropriate  
business transaction by a punitive section like  
this appears to me to be incorrect. All that  
is required, surely, is that the sum in question







1  
2 be regarded as income in his hands, and dividend  
3 income in his hands, if it is not repaid. The  
4 practice of the Department of Revenue very frequently  
5 is to that effect, but the law is not.

6 MR. COYNE: Would you go further and  
7 say any provisions having this deterrent effect  
8 or punitive effect have no place in the Income  
9 Tax Act?

10 MR. GOODMAN: That is a very broad  
11 statement, and I do not know whether I could  
12 subscribe to it.

13 MR. COYNE: In any event, as far as  
14 the particular items referred to are concerned,  
15 you take that view for the reasons indicated?

16 MR. GOODMAN: Yes.

17 MR. EDWARDS: These sections are like  
18 a shot gun. They hit a much larger area than  
19 the abuses they were originally aimed at, and  
20 we deal with some of these same sections in our  
21 submission on corporate reorganization. Some  
22 of these sections put very serious obstacles in  
23 the way of normal business transactions.

24 MR. THOM: They also assume a degree of  
25 sophistication which many, many taxpayers do not  
26 possess. Many kinds of things are done which  
27 fall within the ambit of these sections which  
28 invite punitive attention which were never  
29 conceived of as tax evasion. There are occasions  
30 when punitive action is called for, but then one  
has to rely on what one must call administrative  
discretion not to go after the innocent man, but  
that is a very unsatisfactory act if one is called





1  
2 upon to advise upon it.

3 MR. COYNE: I suppose lots of shareholders  
4 in a company do all sorts of things which the  
5 textbooks would say are illicit activities on  
6 the part of a corporation, but may be perfectly  
7 proper in the way of not offending any of the  
8 people concerned in a small company situation.

9 MR. THOM: Yes, but the point Mr.  
10 Edwards makes is that when taxpayers do take  
11 the trouble to be fully advised on a transaction  
12 they find these punitive efforts and find no way  
13 of dealing with the transactions because the act  
14 is not complete. For example, an amount can  
15 be added but it can be deducted, and so on.

16 COMMISSIONER GRANT: I have one question.  
17 Might I ask if I interpret this correctly that  
18 in your recommendations you would regard rights  
19 as a dividend?

20 MR. GOODMAN: Stock rights conferred  
21 pro rata on all shareholders?

22 COMMISSIONER GRANT: Yes.

23 MR. GOODMAN: There is an express  
24 exemption in respect of rights to buy additional  
25 common shares which are preferred pro rata on  
26 owners of common shares.

27 COMMISSIONER GRANT: You say that  
28 benefits to shareholders under section 8 be  
29 dealt with as dividends. I take it you mean  
30 that rights be treated as dividends?

MR. GOODMAN: To the extent that they  
might be taxable.





1  
2 COMMISSIONER GRANT: They are not  
3 taxable now.

4 MR. EDWARDS: We are not suggesting  
5 that anything should be taxable that is not  
6 taxable now.

7 COMMISSIONER PERRY: You are not  
8 conceding anything.

9 MR. COYNE: I think I will pass over  
10 the next section on page 55 and page 56, Mr.  
11 Chairman. We have then dealt with the corporate  
12 distributions and we return to page 61 dealing  
13 with associated corporations, the provisions in  
14 connection with which the Association suggests  
15 should be completely revised.

16 I suppose one method of avoiding the  
17 problems of associated corporations would be to  
18 abandon the two stage rate of corporation income  
19 tax and simply revert to a single rate. Has  
20 the Association given any consideration to that  
21 particular solution?

22 THE CHAIRMAN: It comes under policy.

23 MR. COYNE: Perhaps it does. Is  
24 that the answer?

25 MR. HULBIG: That is the answer, yes.

26 MR. COYNE: Then I would refer you  
27 to page 62, where you are dealing with the existing  
28 section 138 (a) leading up to your recommendation  
29 on page 63. You say towards the bottom of the  
30 page:

"On the other hand, subjective  
tests for association are incorporated  
in section 138 (a)(2). Under section







1  
2 "138 (a) (2) the theory appears to  
3 be that association of two or more  
4 corporations result if both of the  
5 following subjective tests are met ...."

6 and you set them forth. You then make your own  
7 recommendation for changes.

8 I inferred from your reference to  
9 subjective tests on page 62 that you object to  
10 subjective tests and yet the tests as they  
11 appear in your recommendation, if they are not  
12 identical they are certainly every bit as  
13 subjective as the tests in the present section.  
14 Would you make any comment on that observation?

15 MR. THOM: We object to the judicial  
16 power being given to the minister.

17 MR. COYNE: You object to the ministerial  
18 discretion, but not the tests?

19 MR. THOM: When we come to analyse  
20 section 138 (a) (2) -- and if we have the time  
21 we might do so with some profit -- we felt they  
22 did not really hit the middle of the target, and  
23 we attempt to state the same purpose in what we  
24 think is perhaps better language.

25 MR. COYNE: Yes.  
26  
27  
28  
29  
30





1 MR. THOM: We object to judicial power being  
2 given to the Minister in the terms in which it is.

3 MR. COYNE: Rather than the courts. The  
4 principle purpose and effect of your recommendation is  
5 to eliminate ministerial discretion and put the  
6 determination in the hands of the courts.

7 MR. THOM: Yes.

8 MR. EDWARDS: I think we had in mind  
9 eliminating the subjective test. We didn't get  
10 around to framing a word which would do that better  
11 than the word which was there.

12 MR. COYNE: It might be difficult, Mr.  
13 Edwards, to avoid all these circumstances if we are  
14 looking for a single overall test.

15 MR. EDWARDS: Yes.

16 MR. HULBIG: Actually, I think we were only  
17 trying to draw a distinction between the detail rules  
18 on the one hand and the old provisions and  
19 speculative tests on the other. Perhaps we put  
20 an emotional point in there we did not intend to.

21 MR. THOM: The very detailed test of section  
22 39 as to a more general test such as that enacted in  
23 138A but without ministerial discretion.

24 MR. EDWARDS: It might have been better if  
25 we had said the effect was such and such rather than  
26 using the word "purpose". However, we did not do  
27 that.

28 MR. COYNE: It has been put to us that  
29 although the type of provision which you recommend  
30 would be satisfactory in deterring the splitting up of







1 corporations and generally preventing artificial  
2 proliferation of corporations to take advantage of the  
3 tax rate, but surely, one intention or one aspect of  
4 the two stage rate is simply that a single individual  
5 or family, regardless of how many businesses he  
6 owns or how many legitimate business reasons should  
7 only be entitled to the benefit of the low rate of  
8 tax on one corporation. Of course, the type of  
9 provisions that we are talking about would not  
10 effectuate that intention if there is such an  
11 intention or should be. Would you have any comments  
12 to make on that?

13 MR. GOODMAN: I would suggest, Mr. Coyne,  
14 that part of the difficulty is that the present  
15 legislation as a two stage rate does not distinguish  
16 between helping small business and helping the small  
17 businessman. Any wealthy businessman can be involved  
18 in a large number of small businesses.

19 MR. COYNE: Why should he be entitled to  
20 the low rate of tax on more than one of them merely  
21 because they are separate businesses?

22 MR. THOM: First of all it is not him. It is  
23 the corporations which are entitled to the low rates.  
24 They are separate persons. If he invests his capital  
25 in a trading store and also in an insurance business,  
26 I think that it does not matter whether Jones runs  
27 both of them. They are small businesses which are  
28 contributing to the economy of the country. If the  
29 Government provides he should enjoy the low rate for  
30 business activities, I don't think it matters if Jones





1 runs them all.

2 THE CHAIRMAN: You think the policy should be  
3 to allow each business rather than each person.

4 MR. THOM: Yes. If Jones had a son and  
5 divides his trading business into two parts so he and  
6 his son each get a low rate, he is cutting his son out.  
7 That is the deterring intent and purpose.

8 MR. COYNE: It does not concern you if he  
9 chooses to operate these different businesses through  
10 an unincorporated form he pays a vastly different amount  
11 of taxes.

12 MR. THOM: That is his privilege.

13 MR. COYNE: I would like to go right through  
14 now, Mr. Chairman, to a few questions on the Estate Tax  
15 Act which commences at page 70.

16 THE CHAIRMAN: Right.

17 MR. COYNE: In fact, turning to page 74 you  
18 are dealing with the problems that arise out of the  
19 very broad provision contained in subsection 4B of  
20 section 3 having to do with life insurance and the  
21 effect of a partnership. You say on page 74:

22 "It is understood that s.3(4b)  
23 was introduced to cover situations  
24 such as where a policy on the  
25 life of the principal shareholder  
26 employee of a closely held  
27 corporation is assigned to a  
28 third person, e.g. his wife,  
29 shortly before his death, in order  
30 to avoid the impact of estate tax





1 on the proceeds.

2 The exact area the provision  
3 was designed to cover is not known.

4 It is acknowledged to extend beyond  
5 whatever ills it was to cure."

6 Then your recommendation is that the section  
7 simply be repealed and I will put it to you, would it  
8 not perhaps be preferable that it simply be amended in  
9 order to avoid these unintended general effects but  
10 nonetheless to meet the particular situations which  
11 one judges was originally intended to be covered.

12 MR. HULBIG: Perhaps we were swayed by our  
13 experience with this provision in attempts to amend  
14 it because attempts have been made or it has been  
15 under continuous review for some time and not satisfactory  
16 amendment has passed muster.

17 But I agree with you in principle and theory  
18 it should be amended to cover whatever situations are  
19 felt to be invidious.

20 In asking for its repeal perhaps we were  
21 saying that we should take this section away and try  
22 a separate and new approach with respect to the particular  
23 problems that the administration had in mind so I  
24 would probably be prepared to accept your suggestion.

25 MR. COYNE: But there is a drafting problem  
26 there.

27 MR. HULBIG: Yes.

28 MR. COYNE: Which has not yet been met  
29 satisfactorily in the existing legislation.

30 MR. HULBIG: That is right.







1 MR. EATON: This is the sort of thing the  
2 new legislative review committee may very well attend to.

3 MR. COYNE: Turning then to page 78 in this  
4 same section dealing with the Estate Tax Act, you make  
5 certain recommendations with regard to section 12-5  
6 dealing with the four year limitation on assessment.  
7 I was just a little curious because of the fact that  
8 you did not also make the same recommendation in this  
9 context at the same time in connection with the  
10 equivalent provision of the Income Tax Act. I am  
11 thinking of what we discussed this morning arising at  
12 page 37 of your brief. I think Mr. Lemay spoke to it,  
13 the elimination of the words "misrepresentation or".

14 MR. LEMAY: That is right. The four year  
15 limitation period to cases of actual fraud rather  
16 than including misrepresentation.

17 MR. COYNE: Is this perhaps a matter of  
18 inadvertence or are there facts which distinguish the  
19 two cases.

20 MR. HULBIG: No, it is inadvertence and  
21 thank you for picking it up.

22 MR. COYNE: It is equally as valid to the  
23 Estate Tax Act in your view as to the Income Tax Act?

24 MR. HULBIG: Yes.

25 MR. LEMAY: The word "misrepresentation"  
26 should be taken out of the recommendation.

27 MR. COYNE: Mr. Chairman, that concludes what  
28 I was proposing to ask on the Estate Tax Act.

29 THE CHAIRMAN: Very good. We have the sales  
30 and excise tax left.





1 COMMISSIONER GRANT: May I just make one or  
2 two observations on the Estate Tax Act.

3 THE CHAIRMAN: Have you some questions to ask?

4 COMMISSIONER GRANT: Yes. Where you  
5 recommend on page 72 that the date of valuation was to  
6 be at death or one year after death, at the option of  
7 the estate, I realize that you have taken one year  
8 but I suppose you are not married to the year so much  
9 so you could not say that six months might be a  
10 compromise.

11 MR. HULBIG: It would certainly be of  
12 assistance.

13 COMMISSIONER GRANT: Again on page 74 I think  
14 that one reason we have not followed the American  
15 practice is the fact that this would give rise to a  
16 multiplicity of trusts -- it may not be a valid reason  
17 at all, but it is given. If you could by amendment to  
18 the Act then set up sufficient charitable trusts,  
19 once it was passed as a charitable trust then the  
20 income from that would be permitted as tax free, but  
21 there might be some difficulty if this were allowed --  
22 I don't know how they do it in the United States --  
23 to this extent: That unless he had approval beforehand  
24 by a tax ruling in his will then the whole thing might  
25 fall through. The trust may fall through. Naturally,  
26 if it were not a valid charitable trust that might  
27 create a very bad situation with respect to his  
28 estate.

29 MR. HULBIG: It would certainly call for  
30 some careful drafting.







1 COMMISSIONER GRANT: Yes, and some very good  
2 estate planning.

3 The only other one was on page 77 in the  
4 case of the annuity and payment out over a period of  
5 time, which has been suggested, I believe, to the  
6 Commission, that there might be an option given to the  
7 beneficiary whereby the beneficiary could decide that  
8 payments would continue over a lifetime, or in the  
9 event of prior death, payments would cease. The debt  
10 would be taken as paid.

11 Alternatively the option would be that it  
12 would be on a fixed period of years. That would be  
13 charged against the pension or against the source for  
14 which security would have to be the estate.

15 MR. HULBIG: There has been a number of  
16 suggestions. I think that any method whereby we could  
17 avoid this tax on capital value immediately exigible  
18 would be of assistance in this area.

19 MR. COYNE: Just one or two general observations,  
20 Mr. Chairman, on Sales Tax.

21 The first subject that you discuss in  
22 Part VII under sales and excise tax is the lack of  
23 a statutory basis for wholesale accounts and virtually  
24 everyone who finds interest in this kind of tax does  
25 deplore the lack of some statutory basis for the taking  
26 of wholesale prices. On the other hand we have had  
27 not much comment of a constructive nature on the  
28 form in which such statutory basis should take. My  
29 question would simply be has the committee had an  
30 opportunity to discuss any details in this regard which





1 may be helpful to us.

2 MR. GOODMAN: On page 81 appears our  
3 recommendation in this regard. If the present basis  
4 of sales and excise tax is to be retained, statutory  
5 definitions are given for the wholesale prices.

6 MR. COYNE: Oh yes. I beg your pardon. In  
7 other words you are proposing a specific definition  
8 as set forth on page 81 if we have to maintain the present  
9 basis of sales tax. Did you give any consideration to  
10 the possibility of shifting or alternating the present  
11 manufacturers sales tax to some other level, say  
12 either the wholesale or retail level.

13 MR. EATON: We did. We decided it was a  
14 matter of policy.

15 MR. GOODMAN: The Association has not  
16 expressed a view on it.

17 THE CHAIRMAN: I am very pleased to find the  
18 Sales Tax Committee report came out as well as it  
19 appears to have done with you.

20 MR. EATON: I think, Mr. Chairman, one  
21 explanation for the brevity of this section of our  
22 brief is we have not indicated or attempted to indicate  
23 we are encouraged a good deal by the results of the  
24 Sales Tax Committee report.

25 MR. GOODMAN: It should be noted we differ  
26 from the Sales Tax Committee as set out on page 81.

27 MR. COYNE: Yes, I observed that, but the  
28 whole basis is not very far different.

29 MR. GOODMAN: No.

30 MR. COYNE: The Sales Tax Committee puts it





1 pretty much on the lines that you propose here.

2 MR. EATON: It is pretty close.

3 MR. COYNE: There are some other points of  
4 interest but I was not proposing to ask any further  
5 questions.

6 THE CHAIRMAN: I think we can get along without  
7 comment on this. We understand the views that have  
8 been put before us and I am inclined to the view we  
9 have got a pretty good understanding of the submission.

10 I am personally delighted that you have  
11 refused to get yourself involved in matters of policy.  
12 We have had plenty on that. We have not had enough  
13 on this subject. I am very pleased indeed that you  
14 have brought us in some of the details of the Act and  
15 discussed the form of the Act, just how it should be  
16 legislated and so on. I think this has been a  
17 tremendously valuable day for us. I am extremely  
18 grateful to you and I think that there could be no  
19 more fitting manner than in which to spend a Saturday  
20 afternoon on your 50th anniversary. Thank you ever  
21 so much, gentlemen.

22 MR. MERRIAM: Mr. Chairman, before we adjourn  
23 may I, on behalf of the Association, thank you and the  
24 members of your Commission for the reception which we  
25 have accorded to us today. It has been a great  
26 pleasure for us to appear. We hope the discussion may  
27 be of some value to you. Thank you very much, indeed.

28 THE CHAIRMAN: Mr. Secretary, have you  
29 anything you want to say.?

30 THE SECRETARY: That is all.

THE CHAIRMAN: Stand over until 9:30 am Monday.





# ROYAL COMMISSION

ON

# TAXATION

## HEARINGS

HELD AT

OTTAWA

1917

VOLUME No. DATE

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ROYAL COMMISSION ON TAXATION

Proceedings of hearings held before  
the Royal Commission on Taxation  
in the Supreme Court of Canada  
Building, Ottawa, Ontario,  
commencing at 9:30 a.m. on Monday,  
January 13th, 1964.

COMMISSION:

MR. KENNETH LeM. CARTER -- Chairman

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INDEX TO EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
302	Brief of The Investment Dealers' Association of Canada.	7633
303	Brief of The Toronto Stock Exchange	7730
304	Brief of The Montreal and Canadian Stock Exchange.	7770

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Ottawa, Ontario,  
Monday,  
January 13th, 1964.

---On commencing at 9:30 a.m.

THE CHAIRMAN: Mr. Secretary, are we all here?

THE SECRETARY: Yes, Mr. Chairman.

THE CHAIRMAN: It is practically 9:30. I  
think we might commence.

THE SECRETARY: Mr. Chairman, and Commissioners.  
The brief before you today is being presented by The  
Investment Dealers' Association of Canada. Mr. Lawson  
Glasgow, President of the Association, is here this  
morning with a number of his colleagues who he will  
introduce to you. Mr. Glasgow has a short statement  
to make.

SUBMISSION OF THE INVESTMENT DEALERS'  
ASSOCIATION OF CANADA.

APPEARANCES: Mr. F.L. Glasgow  
Mr. W.M. Reay  
Mr. D.S. Beatty  
Mr. P. Jaffray  
Mr. H. Gassard

I should first of all like to enter this  
brief into the record as Exhibit 302.

---EXHIBIT NO. 302: Brief of The Investment  
Dealers' Association of  
Canada.

THE CHAIRMAN: Thank you, Mr. Secretary.  
Good morning, Mr. Glasgow and gentlemen. We are glad  
indeed to see you here. We have read your submission,  
I might say, with a great deal of interest, and I think  
it is going to be very useful to us. We will have a





1 few questions to put to you, but there is no need to  
2 read the brief again.

3 Today we have asked our counsel, Mr. Stewart,  
4 to lead the questioning. We do not always do that, so  
5 you can take it as a compliment or otherwise.

6 Before proceeding to our questioning would you  
7 like to say anything to us?

8 MR. GLASGOW: Yes, Mr. Chairman. I should  
9 like to make one or two remarks if I may.

10 First of all, Mr. Chairman and gentlemen, I  
11 should like to thank you for the opportunity of appearing  
12 before this Royal Commission on Taxation. May I present  
13 our delegation. On my right is Mr. D.S. Beatty, of  
14 Burns Bros. and Denton, who is the immediate Past  
15 President of the Investment Dealers' Association. To  
16 my far right Mr. William Reay, who chaired the committee  
17 which prepared this part of our brief, of Nesbitt,  
18 Thompson and Company of Montreal. On my left Mr.  
19 Peter Jaffray, of Dominion Securities. On my far  
20 left is Mr. Harry Gassard, of Toronto, who is the  
21 managing director of our Association.

22 In composing our submission we decided that  
23 it was preferable to have it prepared by members of  
24 the Association rather than to employ the services of  
25 a professional consultant. While our members may not  
26 be experts on taxation theory, they do operate from a  
27 good working knowledge of the Income Tax Act, and it  
28 was therefore concluded that our brief would be  
29 confined to specific areas where the specialized  
30 knowledge and experience of members could be drawn upon







1 to offer constructive suggestions to the Commission.

2           Actually the material within the green covers  
3 represents only part of our presentation. The other  
4 part still to be submitted relates to the supplementary  
5 questions which were posed by the Commission arising  
6 out of the federal budget which was introduced last  
7 June. This material will deal with two areas of  
8 interest to the Commission: namely, the role of foreign  
9 capital, and the overall structure of the income tax  
10 and the implications thereof. Our work is well  
11 advanced on these two sections, and will be in your  
12 hands with all possible dispatch.

13           However, when we became involved in the  
14 factors affecting the composition of foreign investment  
15 in Canada, factors affecting investment in equities  
16 by Canadians, the impact of taxation on the investment  
17 process and investor confidence and the implications of  
18 a capital gains tax, we found ourselves drawn  
19 inevitably into a broader consideration of the tax  
20 structure.

21           If I may, Mr. Chairman, I should like to  
22 emphasize one point. Our major recommendation in this  
23 brief is:

24                       "That the inadequacies of  
25 the Income Tax Act be recognized  
26 and faced up to, and bold measures  
27 be taken to rid the Act of its  
28 many ambiguities and conflicts,  
29 even to the point of completely  
30 re-writing the present statute





1 and presenting a new measure  
2 dedicated to the concepts of  
3 simplicity and understandability,  
4 and attuned to the present  
5 economy".

6 The more we worked on the second part of our  
7 brief, the more firmly convinced we became that to  
8 maximize saving and investment and to broaden our  
9 capital market to increase ownership of equities, to  
10 accelerate economic growth, and to achieve a massive  
11 expansion in employment, that the solution will be  
12 found not in overhauling our present tax structure but  
13 in developing a bold new concept and deciding on a  
14 new structure.

15 The present Income Tax Act is indescribably  
16 complex. Many of its influences tend to conflict with  
17 each other and to nullify the end result, to say  
18 nothing of the confusion it causes to business men  
19 and companies when they delve into it and attempt to  
20 follow it through in its actions and reactions. One  
21 has only to seek guidance from a tax specialist and  
22 see him work through the Act to see that an amendment  
23 affects another amendment which affects another  
24 amendment to see that it is rather a frightful patch-  
25 work, if I may say so.

26 As well Canada has less favourable climatic  
27 conditions. It has a smaller domestic market and a  
28 smaller pool of savings than many other countries,  
29 especially the United States. Therefore, it is  
30 essential that we create a comparative advantage for







1 business enterprise and economic opportunity, both of  
2 which are powerfully affected by tax considerations so  
3 that our capital and our trained and talented people  
4 will stay in Canada, and so that we may attract capital  
5 and train people from other countries.

6 In the next section of our brief, which we hope  
7 to send along to you shortly, we will outline our  
8 thoughts on how this comparative advantage may be  
9 gained through simplification of the tax structure,  
10 through drastically lower corporation and personal  
11 income taxes, through the elimination of double  
12 taxation, and through replacement of lost revenue through  
13 indirect taxes.

14 Now, Mr. Chairman, I should like to hand over  
15 to Mr. Reay, who will deal with any questions which the  
16 Commissioners may have to ask on the first part of the  
17 brief which has been submitted, and thank you again for  
18 allowing us to come here.

19 THE CHAIRMAN: Thank you so much, Mr. Glasgow.  
20 Before we go onto that, what you say in the second part  
21 of your brief when dealing with the questions put to  
22 you by ourselves is a very far ranging submission, I  
23 take it. It must contain a great many recommendations.  
24 We shall certainly have an extreme interest in it. I  
25 regret that I do not think it can be the subject of  
26 the public hearing, but we may be able to find ways  
27 and means of coming together to discuss it, if that is  
28 desirable.

29 MR. GLASGOW: That was not the thought, Mr.  
30 Chairman. It was simply to supplement our brief this





1 morning with this additional information.

2 THE CHAIRMAN: Thank you, Mr. Glasgow. Now,  
3 Mr. Stewart, will you proceed?

4 MR. STEWART: Thank you, Mr. Chairman.  
5 Gentlemen, I think that in my questioning I should like  
6 to start with the specific recommendations you have made  
7 in this brief, and then perhaps come back at the end  
8 to the general recommendation which has already been  
9 mentioned. I would propose to take the specific  
10 recommendations in order, and therefore to start with  
11 Section A.

12 In that suggestion you suggest that there  
13 should be a means of differentiating for tax purposes  
14 between long term investments, on the one hand, and  
15 securities purchased for trading purposes on the other  
16 as far as investment dealers are concerned. Can you  
17 tell us whether in practice the Department has not  
18 been prepared to recognize such a distinction?

19 MR. REAY: Investment dealer firms are all  
20 privately owned, and in many ways they do not discuss  
21 their problems one with another. Therefore, I am not  
22 familiar with the results of discussions between the  
23 Taxation Division and other firms. I know that in  
24 principle it is very difficult to establish because  
25 there are no clear cut rules to govern. I think it is  
26 pretty well taken for granted that an investment  
27 dealer operates from a trading inventory, and the  
28 presumption seems to be that any profits or losses are  
29 the result of trading. The onus of proof is on the  
30 investment dealer, which is very difficult for him in





1 absence of any rules for his guidance.

2 MR. STEWART: I take it that you would  
3 concede that to the extent that you have an inventory  
4 which has been acquired for trading purposes profits or  
5 losses should be brought into the income account?

6 MR. REAY: Yes, sir, certainly.

7 MR. STEWART: Does the Department in fact  
8 permit investment dealers to establish investment  
9 accounts? By "investment accounts", by that expression,  
10 I mean accounts into which they carry securities which  
11 they hold or wish to hold, not as inventory but for  
12 investment purposes.

13 MR. REAY: The only ones to my knowledge  
14 are rather clear cut cases of subsidiary companies,  
15 wholly owned subsidiary companies of one kind or  
16 another, which are at one end of the scale and the  
17 trading inventory at the other. The problems seem to  
18 arise in the area in between.

19 MR. STEWART: Then in paragraph 3 in Section A  
20 you suggest that an investment dealer should be  
21 permitted to allocate particular securities to an  
22 investment account, or to attribute investment status  
23 to them. You suggest that there might be some time  
24 element involved. Have you any more specific rules  
25 to suggest than are set out in paragraph three for this  
26 demarcation between trading securities and investment  
27 securities?

28 MR. REAY: No, I do not believe so. I think  
29 that some rules along that line would give investment  
30 dealers the concrete base on which to establish the







1 status of the security. In one case, a recent case  
2 which comes to my mind, a firm acquired a block of  
3 securities through an underwriting, and in fact held  
4 them over a fairly long time and subsequently sold them.  
5 This was treated as a trading profit, presumably because  
6 of the manner in which the securities were acquired.  
7 So the time factor was not considered at all; nor was  
8 the investment dealer then able to elect a status.  
9 It was automatic. Having acquired the securities in  
10 this manner, when they were sold the profit was  
11 taxable.

12 MR. STEWART: Where a particular house has  
13 been engaged in an underwriting you think it should be  
14 possible to take some of the securities involved and  
15 set them aside for investment purposes?

16 MR. REAY: If that is the intention of the  
17 dealer, to hold them for investment, yes.

18 MR. STEWART: Leaving that type of security  
19 aside -- that is, the type in which a firm has acted  
20 as an underwriter -- let us suppose that a particular  
21 firm purchases a block of shares of a particular listed  
22 company on the market and holds them or takes whatever  
23 steps you think are appropriate to indicate that it  
24 regards these shares as an investment rather than as  
25 part of its inventory. What sort of minimum period  
26 would you have in mind as requisite to establish  
27 conclusively some investment status? Are you thinking  
28 in terms of six months or a year, or some period of  
29 that sort?

30 MR. REAY: Generally speaking I would think





1 a somewhat longer period.

2 THE CHAIRMAN: The U.K. rule is six months,  
3 I think.

4 MR. REAY: I think a longer period, one year,  
5 three years, something of that nature. Certainly  
6 securities purchased for inventory are normally taken  
7 over at a much faster rate. Then if the market has  
8 declined and the dealer does not wish to suffer a loss,  
9 he just holds onto his inventory hoping for an upturn  
10 in the market. Generally speaking, inventories turn  
11 over quite rapidly.

12 MR. STEWART: Mr. Chairman, I do not think I  
13 have any other questions on Section A.

14 THE CHAIRMAN: I should like to understand  
15 this a little more clearly. I should like to know  
16 whether or not these gentlemen would be pleased if a  
17 rule were inserted in the Act or in the regulations,  
18 or indeed if a rule were brought into play, to the  
19 effect that a distinction between capital and income  
20 in transactions affecting securities should be made, I  
21 imagine on a time basis. If that were put on a most  
22 generous time basis, would it be satisfactory? We  
23 have had other recommendations to the effect that  
24 anything on a time basis would be unsatisfactory and  
25 the rules would be better as they stand now. We have  
26 also had representations to the effect that even now a  
27 rule might not be unfair in a great number of instances,  
28 as any such time rule would bound to be. But it would  
29 provide certainly the benefit of certainty if such  
30 unfairness where it arose could be accepted. Would you







1 have anything to say as to whether you believe that  
2 the time rule would be better than the present  
3 uncertainty?

4 MR. REAY: I believe the time rule, along with  
5 the ability to elect the status ---

6 THE CHAIRMAN: I am sorry, I do not follow what  
7 you say about the ability to elect the status. This  
8 rather sounds like a subjective test, and I do not see  
9 how it can be a subjective test for taxation purposes.

10 MR. REAY: The intention of our recommendation  
11 was that the investment dealer would elect the status  
12 of a block of securities at or about the time of  
13 purchase; that he would in effect say: "I am buying  
14 these for investment purposes". Then if he held them  
15 for a requisite period of time they would be so  
16 classed, win or lose.

17 THE CHAIRMAN: If he sold them before that  
18 time they would be taxed as ordinary income, I presume?

19 MR. REAY: Yes.

20 COMMISSIONER PERRY: What confuses me is  
21 that you give the right to elect the status as an  
22 alternative to the time period. Then you go on to say:  
23 "or a combination of both of these". I am just  
24 wondering how the election would work if it were the  
25 only provision?

26 MR. REAY: I think the purpose of wording it  
27 in this way is to leave the matter more open to your  
28 judgment as to one or the other, or both.

29 THE CHAIRMAN: I do not think Mr. Perry and I  
30 followed the first alternative as to what it means.





1 COMMISSIONER PERRY: I have no idea at all  
2 what it means, quite frankly.

3 THE CHAIRMAN: If one can make the election  
4 and be taxed according to that election, it is obvious  
5 what the election will be. Obviously there must be  
6 some minimum time period.

7 MR. REAY: Yes, I think some minimum time  
8 period should be tied to it. Of course, electing at  
9 the time of purchase, the dealer does not know then  
10 whether or not he is going to be able to sell the  
11 securities at a profit or a loss.

12 THE CHAIRMAN: If I were a dealer and had the  
13 right to elect, I would not have an awful lot of  
14 difficulty making my election. I would elect in such  
15 a way as to minimize the amount of taxes. One is  
16 entitled to do that; that is the law. But surely the  
17 rules have to be such, I think, to apply equally to  
18 all, or as close as one can come to that. Therefore,  
19 I should have thought that either we go with what we  
20 have now, which you do not like because it is ambiguous  
21 and hard to interpret, and there are many things the  
22 matter with it, or else you have something which would  
23 be unfair to a great many at certain times, but which  
24 is understandable. But I do not think you can have  
25 both. The American rules are arbitrary, and certainly  
26 a lot of people do not like them because they are  
27 arbitrary, but for the most part I think they are  
28 generous. There is a time limit, and you do know what  
29 the time is and what you have let yourself in for.  
30 Certainly there is a good deal in having a tax on





1 speculation because then at least one has some idea  
2 of what he is doing. The other day in England we  
3 asked some accountants making up tax returns whether  
4 they had seen any profit statements. They said no,  
5 but they had seen several losses. There is a period  
6 of six months delay for these things, but they will  
7 catch up with them, I would think. I do not think  
8 there is any easy way through this.

9 MR. GLASGOW: I think it is essential that  
10 there must be a time area. Mr. Jaffray has one or  
11 two thoughts in connection with a particular situation  
12 that perhaps he might present to you.

13 MR. JAFFRAY: Mr. Chairman, I think the  
14 principal problem is one of uncertainty. I can give  
15 you an illustration of a major investment house -- this  
16 is not one I had any connection with -- which back in  
17 1932, 1934, or thereabouts, bought in the parent company  
18 a very large block of a major enterprise in Canada  
19 for control purposes, or largely to influence control.

20 That company at the time was running into  
21 difficulties. They needed to be able to revise the  
22 whole organization. Today that investment dealer  
23 sits with those shares. They form a very large part  
24 of its net worth, nearly 50 per cent. They cannot  
25 sell because if they do, taking the differential from  
26 the level about 1934 or thereabouts up to today's  
27 market, they would pay virtually a 15 per cent on  
28 almost the whole amount. They do not need control  
29 today. The enterprise has completely recovered; it  
30 is in excellent shape. For all practical purposes







1 they are frozen in, and they do not know what to do with  
2 them.

3 There have been other instances, and I know  
4 of some directly, where shares have been acquired in a  
5 subsidiary company of an investment dealer. Those  
6 investment dealers are working on the basis that those  
7 shares, or any gain held over a long period of time  
8 will be considered as capital; but they do not know.  
9 So it all comes back to the question of uncertainty.

10 For myself, I would highly favour a time  
11 tap as a large part of the test, and I would think  
12 somewhere in the neighbourhood of three to four years  
13 would be proper. If an investment dealer buys something  
14 for three to four years, he is not trading in it.

15 THE CHAIRMAN: If he holds it over for the  
16 three or four year period, it ceases to be a trade?

17 MR. JAFFRAY: Yes.

18 THE CHAIRMAN: In the first instance you gave  
19 us, the reason it was not considered, for taxation  
20 purposes, as being an investment, I take it, is because  
21 of the way he acquired it; is that right?

22 MR. JAFFRAY: Regrettably, it was acquired  
23 in the parent company as a straight inventory item,  
24 and they find it impossible to do anything with it.

25 COMMISSIONER GRANT: From the knowledge I have  
26 at the present time in so far as the operations, for  
27 instance, of a trust company are concerned, it has its  
28 capital account, and this the Income Tax Department  
29 people regard as a trading account. It has its  
30 guaranteed account. If it buys for its capital





1 account and the securities find their way in there,  
2 there is no question that those are not subject to  
3 capital gain. But they are placed in that account  
4 in the very beginning, and they are not traded back  
5 and forth.

6 If such a thing could be devised for the  
7 investment dealer, it would probably answer your  
8 problem. At the present time, when you buy an issue  
9 you put it into inventory. The difficulty, I should  
10 think, with the Income Tax Department is this, that  
11 you are trading in those securities even if you hold  
12 them for three or five years; you are still trading  
13 into your trading account, and at the end of three  
14 years you say, "We have to elect. We are going to  
15 elect to keep this because it has proved to be a good  
16 issue and it has shown a great appreciation of value.  
17 It is better for us to put this into our capital  
18 account so it is not taxable."

19 There is quite a problem there. I would  
20 think the time lag works entirely in favour of the  
21 investment dealer in that case, because he has three  
22 years in which to make up his mind as to whether he  
23 is going to keep it in investment account or keep it  
24 in capital account.

25 I was going to ask you if you could put us  
26 into the picture in so far as the present operations  
27 are concerned, let us say, of an investment dealer  
28 who is operating as a limited company. There is  
29 nothing to preclude the directors or members of that  
30 company, or partners, which I believe is the correct







1 term; the directors are partners, not altogether --

2 MR. JAFFRAY: Generally speaking.

3 COMMISSIONER GRANT: Generally speaking. But  
4 in any case, there is nothing to prevent them dealing  
5 in their own personal account. They are as free as  
6 any other citizen is to deal in securities in their  
7 own personal account, are they not?

8 MR. JAFFRAY: In a very cautious way, sir.

9 COMMISSIONER GRANT: I beg your pardon?

10 MR. JAFFRAY: In a very cautious way.

11 THE CHAIRMAN: You mean, subject to company  
12 law?

13 MR. JAFFRAY: No; it is a frequency factor.  
14 I would say that most major partners in the larger  
15 investment firms are very cautious about their own  
16 personal transactions. Certainly all the ones I have  
17 ever spoken to have always, if anything, lent over  
18 backwards to not trade to any degree of frequency. If  
19 they buy something, they deliberately put it away and  
20 hold it, in the hope that the time factor will  
21 establish it as a non-trading item.

22 COMMISSIONER GRANT: I suppose, to use a  
23 slang expression, the partners are really "fair game"  
24 for the income tax authorities?

25 MR. JAFFRAY: They are afraid they are.

26 COMMISSIONER GRANT: Because they are in a  
27 position to become traders in their own personal  
28 capacity.

29 MR. GLASGOW: If I might just add something  
30 there, Mr. Chairman, I think perhaps the word "partner"





1 is a misnomer, because in the investment companies  
2 there are basically more limited companies now than  
3 there are partnerships.

4 COMMISSIONER GRANT: I am quite aware of  
5 the distinction between a partner and a director.  
6 "Partner" applies to a partnership. But I have seen  
7 on the letterheads, I think, of some investment  
8 companies that directors are regarded as partners.

9 THE CHAIRMAN: You have seen investment  
10 firms called John Smith and Partners Incorporated,  
11 John Smith and Partners Limited, or something like  
12 that?

13 COMMISSIONER GRANT: No, I was thinking of  
14 Mr. Jaffray's own company, or Woods Gundy, where some  
15 of the directors are shown as partners. Not all  
16 directors are partners. Am I right?

17 MR. JAFFRAY: I agree that we think of it  
18 that way, but technically that is not right. They  
19 are shareholders and/or directors. I think in that  
20 case a director has to be a shareholder.

21 MR. GLASGOW: Yes, and that gets back to  
22 the situation where if the principal shareholders  
23 decide to make an investment they cannot on behalf  
24 of the firm. If they make it on behalf of the firm,  
25 they cannot do it individually, because they are  
26 acting for minor shareholders as well as the principal  
27 shareholders.

28 THE CHAIRMAN: Is there anything further  
29 on this item? Mr. Stewart, will you proceed?

30 MR. STEWART: Thank you, Mr. Chairman.





1 Gentlemen, your next main section is entitled "Canadian  
2 Income Tax Structure", and Part I under that tax  
3 section deals with the effect of the tax structure on  
4 the form and cost of raising capital.

5 The first subject you deal with under that  
6 general heading is the subject of equity versus the  
7 setting out of certain tax measures which you think  
8 are material in this connection, you say, in paragraph  
9 4 on page B-2 that there is a strong bias toward  
10 debt financing on the part of corporations in Canada.

11 Then in paragraph 5 you suggest that this  
12 may have produced higher interest rates in this country  
13 than would otherwise obtain. Might I ask you how  
14 interest rates in Canada compare generally with  
15 interest rates in the United States.

16 MR. REAY: I think perhaps as a general  
17 statement Canadian rates are higher. In the investment  
18 business we take a rough rule of thumb as about a  
19 half of one per cent. This is not always true, of  
20 course, from day to day, but generally speaking over  
21 the years this is the way it has gone.

22 MR. STEWART: I take it that the deductibility  
23 of interest for tax purposes in the United States is  
24 the same as in Canada. It is substantially the same,  
25 is it not?

26 MR. REAY: Yes.

27 MR. STEWART: So that this spread in  
28 interest rates between the two countries presumably  
29 relates to factors other than the tax factor?

30 MR. REAY: Mr. Beatty has some thoughts on







1 that.

2 MR. BEATTY: Basically, that is true, that  
3 there are factors other than the tax factor. The  
4 chief amongst them, of course, is the supply of money  
5 available for debt investment as against the demand.  
6 However, there is a difference in the tax considerations  
7 in the two countries which create a greater bias in  
8 favour of equity investment on the part of individual  
9 investors in Canada than exists in the United States.

10 MR. STEWART: I was going to come to the  
11 equity situation. You also say in paragraphs 4 and  
12 5 on page B-2 that both individuals and corporations  
13 in Canada prefer equity for tax reasons and that this  
14 preference may have led to lower equity yields in Canada  
15 than would otherwise be the case.

16 I was going to ask you, first of all, how  
17 equity yields in Canada compare with equity yields in  
18 the United States.

19 MR. BEATTY: Somewhat lower.

20 MR. STEWART: They are somewhat lower in  
21 Canada. When you say "somewhat" are you thinking in  
22 terms of one-half of one per cent again?

23 MR. BEATTY: I am afraid it is an impossible  
24 thing to measure. If you take a common stock and try  
25 and compare it with its counterpart in the United States  
26 on the basis of yield, you are ignoring so many other  
27 important factors, such as the rate of growth, the  
28 long record of earnings that the company might have  
29 had, and it is a little difficult to compare. The  
30 yield on the Dow Jones industrial averages, as compared





1 with Toronto averages, are somewhat higher.

2 MR. STEWART: Would that have been true  
3 before the Canadian dividend tax credit was introduced?

4 MR. GLASGOW: It has had it, certainly.

5 MR. STEWART: We have a tax credit in Canada  
6 for individuals, a dividend tax credit, which far  
7 exceeds anything they have in the United States. Is  
8 it not also the case that the intercompany dividend  
9 exemption in Canada is somewhat more liberal than it  
10 is in the United States?

11 THE CHAIRMAN: What dividend, Mr. Stewart?

12 COMMISSIONER PERRY: The intercompany dividend.

13 MR. REAY: I do not think so. I think they  
14 are the same.

15 MR. STEWART: It was my impression that in  
16 the United States a dividend moving from one resident  
17 company to another was exempt only as to 85 per cent,  
18 but I am not certain of this.

19 THE CHAIRMAN: Well, we can confirm that.

20 COMMISSIONER PERRY: That is my impression also,  
21 Mr. Stewart.

22 MR. STEWART: In any event, would you  
23 consider that taxation factors in Canada may have  
24 contributed to the fact that our equities sell on a  
25 lower yield basis than American equities?

26 MR. REAY: Yes.

27 THE CHAIRMAN: Before you leave that, Mr.  
28 Stewart, would not capital gains tax have an effect on  
29 that?

30 MR. STEWART: I take it you are asking these







1 gentlemen, Mr. Chairman?

2 THE CHAIRMAN: Yes.

3 MR. REAY: I think this would be part of  
4 the attraction of equities to the individual investor  
5 in Canada.

6 THE CHAIRMAN: The absence of the capital gains  
7 tax?

8 MR. REAY: The absence of the capital gains  
9 tax here, yes.

10 MR. STEWART: But I take it that these yields  
11 on equities, are not to be explained purely by taxation  
12 factors?

13 MR. REAY: No. I think the taxation factors  
14 are an influence, but not the only one.

15 MR. STEWART: I notice that at the end of  
16 paragraph 5 on page B-2 you say:

17 "It may also be that the  
18 higher interest rates and lower  
19 equity yields have not produced  
20 a lesser supply of debt  
21 influence or a greater supply  
22 of equity".

23 I wonder if you could perhaps explain that  
24 a little further.

25 MR. REAY: I think what we are trying to say  
26 is that with a higher interest rate this would normally  
27 be expected to encourage the purchase of interest-bearing  
28 securities by the public, create a greater demand and  
29 perhaps, therefore, a greater supply.

30 But this is offset by the lack of capital





1 gains and the dividend credit on common stocks. So  
2 that the individual investor looks rather at his  
3 after-tax yield rather than the before-tax rates. You  
4 have high interest rates and low dividend yields, but  
5 they tend to come closer together when you look at the  
6 after-tax result.

7 MR. STEWART: I take it that it is also  
8 implicit in this that the preference of an issuing  
9 company for the issuance of debt instruments because  
10 of the deductibility of the interest will induce that  
11 issuing company to pay these higher interest rates?

12  
13 --

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1 MR. REAY: Yes, sir.

2 MR. STEWART: Suppose in this country it were  
3 to be provided that ---

4 THE CHAIRMAN: When you said "Higher", did  
5 you mean higher than in the United States, Mr. Stewart?  
6 I did not quite follow that.

7 MR. STEWART: Well, they say that prevailing  
8 interest rates in this country are higher than would  
9 otherwise be the case because of the deductibility of  
10 interest.

11 THE CHAIRMAN: That is what you meant when  
12 you used the word "higher" in the last sentence, is it?

13 MR. STEWART: Yes, higher than what they  
14 referred to as the normal rate.

15 THE CHAIRMAN: I thought you meant higher  
16 than the rate in the States, because that is the rate  
17 they compared it with.

18 MR. REAY: I think that what we are driving  
19 at is that that is what a corporation is willing to pay  
20 to obtain a higher interest rate so as to obtain  
21 borrowing money than they are willing to pay in  
22 dividends in raising equity. They would rather raise  
23 debt money than equity and pay the penalty of a higher  
24 interest rate which is deductible. Therefore, from  
25 their point of view their after tax cost of raising  
26 the money is lower than the after tax cost of raising  
27 equity.

28 THE CHAIRMAN: Then you are saying that they  
29 are prepared to accept the higher interest rate than  
30 a higher dividend rate, because in the net effect it







1 probably comes out pretty much the same anyway?

2 MR. REAY: Yes.

3 MR. STEWART: Supposing in this country it  
4 were to be provided that dividends would be deductible  
5 in the computation of income. What effect would this  
6 have on the relative proportions of equity and debt  
7 financing?

8 MR. JAFFRAY: We believe, Mr. Chairman, that  
9 this would be a step in the right direction. At the  
10 present time most corporate financing is in practice  
11 very strongly influenced by the fact that debt interest  
12 is tax deductible. In talking to corporations, almost  
13 instinctively they see how far they can go on the  
14 debt pattern. There are other factors, such as the  
15 relationship of debt to equity, etc., but if dividends  
16 on preferred shares and common shares, and even interest  
17 on debt, were all placed on the same basis as a pre-  
18 tax item, then financing would be done and governed  
19 by what was best for the corporation, inside of certain  
20 other cost factors.

21 You would normally expect to have the  
22 relationship of interest to preferred stock dividend  
23 rate, to common stock dividend rate, which would reflect  
24 the risk factor. There are today companies who are  
25 willing to go much more heavily into debt because of  
26 the interest deductibility factor. I would not say  
27 yet that there are signs of going dangerously so, but  
28 there is that inclination. With the differentials  
29 between dividends and interest, then management would  
30 probably steer in the direction of equity financing





1 because they cannot get into nearly as much trouble  
2 under those circumstances.

3 THE CHAIRMAN: Would that statement not  
4 contradict your paragraph 5, Mr. Jaffray? It is  
5 contrary to my understanding of that paragraph, although  
6 I do not suggest that my understanding is correct. As  
7 I read it it suggests that the influence of the tax  
8 deduction in the case of interest and dividend credit,  
9 in the case of equity and in the case of dividends,  
10 really establishes neutrality as between the two. One  
11 pulls in one direction and the other pulls in the other  
12 direction, and it seems to me, from the statement here,  
13 that they just about offset one another, so that taxation  
14 ceases to be a factor as to the choice made. In fact,  
15 a shareholder likes the dividend credit and a company  
16 likes the dividend deduction, but when you equate the  
17 two they come out at about the same.

18 Now, you say not so. In fact, you say we  
19 are having more debt financing because of interest  
20 deductibility. I assume that if the words "dividend  
21 credit" were dropped from that statement of yours we  
22 would still have more debt financing because we would  
23 have lost the influence in favour of equity financing.

24 On the other hand, if interest was not  
25 fully deductible we would have more equity financing.  
26 What you say now is, I think, that the pull of dividend  
27 credit is not sufficiently strong to offset the  
28 advantage of the interest deduction. When one looks at  
29 it I think that the influence of one is on the company  
30 and the influence of the other is on the shareholder.







1 But when you come to equate one with the other the  
2 whole thing comes together. Am I not right in that?

3 MR. GLASGOW: I do not think necessarily so,  
4 because there would be the tendency on the part of  
5 corporations to pay higher dividends, and also there  
6 would be the tendency to finance by way of preferred  
7 or common shares, which is done on unlimited terms as  
8 far as repayment is concerned. We would have the  
9 tendency to be buying equities and the corporation in  
10 itself would be in a position to pay a higher dividend,  
11 part of which would be tax free. If desirable that  
12 could be passed on to the shareholder, who would be  
13 getting the higher dividend but perhaps losing the  
14 20 per cent credit.

15 THE CHAIRMAN: I am seeking the position of  
16 tax neutrality. Mr. Jaffray said that we can really  
17 only accomplish that if dividends were deducted, and  
18 I can see that if dividends were deducted and treated  
19 in the same way as interest that would be accomplished,  
20 provided you gave up the dividend credit.

21 MR. BEATTY: There is a further factor, Mr.  
22 Chairman, in that consideration. There is the case  
23 that the dividend credit and the privilege of passing  
24 dividends through which are exempt from income tax  
25 applies only to part of the market. One of the largest  
26 sources of investment capital, which is the life  
27 insurance companies and the pension funds, gains no  
28 benefit and consequently is not attracted to equity  
29 investment.

30 COMMISSIONER GRANT: Before leaving that





1 subject there is also the factor that corporations  
2 generally are reluctant to place their control in  
3 jeopardy at any time. The more shares that are out  
4 the greater is the fact that they may lose control. That  
5 is to say, if a company has 50,000 shares out and  
6 they are very closely held, then they are not in very  
7 much danger. But if they have 500 shares out then  
8 perhaps 10 or 15 per cent might control that corporation.  
9 That position could be obtained by quiet buying on  
10 the market in some cases. So that equity financing  
11 is probably influenced to some extent by that, or the  
12 lack of equity financing may be influenced to some  
13 extent by that.

14 MR. REAY: There are always, of course, a  
15 number of factors other than tax considerations which  
16 come up in negotiating on new issues and securities  
17 by a corporation. Whether they are to be mortgage  
18 bonds, debentures, preferred shares or common, the  
19 tax factors, of course, are only one consideration of  
20 many which are taken into account. Certainly what  
21 you say is one of the many other factors. I think that  
22 what we are saying is that if the tax factors were  
23 eliminated, then it would be the other considerations  
24 which would govern without the overwhelming preference  
25 now for debt securities if at all possible, if this  
26 does not destroy the ratios of the capital position  
27 and control and all the other factors which come into  
28 it.

29 COMMISSIONER GRANT: Also, Mr. Reay, would  
30 you not agree that the rate on fixed income securities





1 has been determined to some considerable extent by the  
2 financing that we have had to do in New York, where,  
3 first of all, provincial governments went there before  
4 1960 for most of their financing. Municipal governments  
5 also went there, and certainly the Dominion went there.  
6 The coupon that is put on an issue is determined to  
7 no small extent on the basis of how this issue will  
8 take in the United States with United States investors,  
9 is it not?

10 MR. REAY: Oh, yes.

11 COMMISSIONER GRANT: Therefore, there is a  
12 differential. There always has been, as you have  
13 mentioned, against Canadian issues, just as there is  
14 a differential between a Government of Canada bond and  
15 a guaranteed Government of Canada bond.

16 MR. REAY: Yes, sir. Perhaps the major  
17 factor when an issue is placed in the United States in  
18 Canadian funds is the unknown problem of the exchange  
19 rate and the difference in rate. It could be argued  
20 that difference in rate is to compensate for the risk  
21 of the United States investor for not knowing how many  
22 United States dollars he will get back when he sells.

23 MR. STEWART: I wonder if I could ask you to  
24 comment on a paragraph which I should like to read to  
25 you from an American publication which is entitled:  
26 "The Federal Revenue System: Facts and Problems, 1951".  
27 This book, which I have in my hand, is, I think, intended  
28 to be a statement of the pros and cons of certain tax  
29 questions which are currently being considered in the  
30 United States. This was prepared for the Joint







1 Economic Committee of Congress.

2 On page 31 they deal in part with the  
3 suggestion that dividends might be made deductible in the  
4 computation of income for tax purposes in the United  
5 States, in part because of the allegation that as matters  
6 now stand there is a sort of built in bias for debt  
7 financing. I should like to read this statement to you:

8 "It is pointed out that tax  
9 considerations generally are not  
10 dominant in determining the form  
11 of financing sought by corporate  
12 enterprise. It is argued that  
13 one of the principal limitations  
14 of equity financing stems from the  
15 desire on the part of existing  
16 shareholders to avoid dilution of  
17 their interest through additional  
18 equity issues.

19 Furthermore, it is maintained  
20 that the character of the market  
21 for the supply of capital funds  
22 is another important factor in  
23 determining the form of corporate  
24 financing. This market, it is  
25 claimed, is dominated by  
26 institutional investors, such as  
27 commercial banks, savings banks,  
28 insurance companies and trusts,  
29 which are generally restricted  
30 either by legal requirements or





1 by traditional investment practice  
2 to high-grade bonds.

3 It is also asserted that the  
4 adverse effects of debt financing,  
5 allegedly induced by tax  
6 considerations, on the willingness  
7 of corporations to undertake risky  
8 investments are greatly exaggerated.  
9 In this connection it is pointed  
10 out that many of the most highly  
11 speculative ventures are financed  
12 with very thin equity, and indeed  
13 that it is the prospect of realizing  
14 substantial net returns on this  
15 equity through the leverage  
16 afforded by the debt financing,  
17 which primarily impels this type  
18 of investment.

19 Finally, it is argued that a  
20 very large proportion of the  
21 capital funds required by  
22 corporations are derived internally.  
23 Taking such funds into account no  
24 significant overloading of debt  
25 in corporate financial structures  
26 is generally observable".

27 That is perhaps a large mouthful to put to you  
28 at once, but is there anything in that -- which, of  
29 course, relates to the American picture -- which you  
30 regard as irrelevant to the Canadian picture?







1 MR. REAY: What Mr. Beatty is saying is that  
2 the whole extract that you have read is relevant to  
3 Canadian financing as well as American. I have  
4 forgotten how it started, but at the end there was  
5 reference to no apparent over-debting of companies.

6 MR. STEWART: Yes, that is correct.

7 MR. REAY: When investment dealers are  
8 negotiating with corporations for new issues of  
9 securities, these are the things, of course, that we take  
10 into account. Our tendency perhaps is to hold the  
11 companies back from being over-debted because they would  
12 rather have issued more debt than equity. Part of our  
13 job is to hold them back from doing this, with our  
14 knowledge of corporation financing generally, to try  
15 and maintain some balance between the various kinds  
16 of debt, preferred shares and common shares.

17 Perhaps a good example are the finance  
18 companies, which have a great variety of capital. They  
19 have short term notes, they have debentures, they have  
20 preferred shares and they have common shares. Over  
21 the years there has developed something of a standard  
22 formula for the ratio of one to the other, and by and  
23 large they stay within that ratio.

24 MR. STEWART: Would you consider that in  
25 different types of industry there is a debt equity  
26 ratio which is reasonably appropriate to that industry?

27 MR. REAY: Generally speaking I think that  
28 is true.

29 MR. STEWART: Then this would, of course,  
30 militate against the undue issuance of debt by issuing





1 companies. At least, those who were issuing through  
2 the Investment Dealers Association.

3 MR. REAY: Yes, sir. The tendency is  
4 certainly for a company to want to issue more debt.

5 COMMISSIONER PERRY: I wonder if there is  
6 not a thought which should be borne in mind which  
7 arises out of one of the last sentences in that  
8 statement, with which I think the witness agreed, that  
9 in the overall there is no over-debting of corporations.  
10 What intrigues me is that by their retention of  
11 earnings corporations are in fact relying extensively  
12 on equity financing year after year. What they are  
13 doing is going to the market for it. In other words,  
14 they are not issuing pieces of paper in order to get  
15 back into the company what is already there and owned  
16 by the shareholding. So I must say that I am more  
17 interested in the effect of the tax system on the  
18 manner in which a corporation obtains its equity.  
19 Probably it is earning all it needs now. The figures  
20 of retained earnings are enormous in relation to debt  
21 financing.

22 Now, would it be your feeling that the  
23 deduction of dividends would result in the issuance  
24 of more shares, that is, a greater number of pieces of  
25 paper, on the capital stock side of the company than  
26 there are now.

27 MR. JAFFRAY: Yes, sir. We all feel that  
28 if dividends were placed on the same basis as interest  
29 and debt there would be a much greater flow of payment  
30 out from corporations into the hands of the public





1 investors, and a much larger percentage of equity  
2 financing. What Mr. Reay says is absolutely correct.  
3 In negotiating any transaction with a company it is  
4 the investment dealer almost invariably who is holding  
5 the company back from over-debting itself. In nearly  
6 all cases they try to go as far as they can on the  
7 debt loading. This, of course, is governed by many  
8 other factors. Quite frankly, we are governed by  
9 what the market place will let us sell at. We know  
10 perfectly well that if we say yes to a corporation to  
11 an excessively high rate of debt we will not be able  
12 to sell it. The vesting institutions and the public  
13 at large will not go beyond a certain point.

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1 For different kinds of industries there are different  
2 rough yardsticks extending anywhere from 25 per cent to  
3 30 per cent debt up to, in the case of certain kinds  
4 of utilities, 75 per cent debt.

5 COMMISSIONER PERRY: We are still talking  
6 about the margin here, and that is where they are  
7 forced, by the fact that they do not have enough money  
8 in the company, to go to the market. I am much more  
9 interested in the mass of equity financing which goes  
10 on now simply by the retention of earnings.

11 Would a deduction of dividends result in a  
12 lower retention of earnings; this is basically what I  
13 am asking?

14 MR. JAFFRAY: Yes, certainly, in my opinion.

15 THE CHAIRMAN: That leads to my question which  
16 provides an alternative. Would not the same result be  
17 achieved by a tax on undistributed earnings, which is  
18 what many European countries in fact do, as you well  
19 know. The purpose of it, as explained by them, is to  
20 increase the supply of securities on the market.  
21 Whether it works or not, I do not know.

22 MR. JAFFRAY: Yes, Mr. Chairman, excepting  
23 that I am not quite sure if I understand clearly what  
24 you are saying. But if you mean, leave the situation  
25 as it is and increase or add another tax, which would  
26 be a tax on undistributed profits, then in our opinion  
27 that is a backward step. We believe in the carrot, not  
28 the club, and we are trying to encourage the sort of  
29 a reduction.

30 THE CHAIRMAN: It need not be a carrot or a





1 club. Supposing instead of the 50 per cent tax rate  
2 it was 45 per cent on the distributed and 55 per cent  
3 on the undistributed; I suppose you would have both the  
4 carrot and the club then?

5 MR. JAFFRAY: Yes, in a sense.

6 THE CHAIRMAN: I would suspect that the  
7 effect of that would be perhaps to get more profit, would  
8 it not?

9 MR. JAFFRAY: I would agree.

10 THE CHAIRMAN: Generally speaking, it would have  
11 the same result as that you are speaking of?

12 MR. JAFFRAY: Except it would have to be  
13 wider -- this is splitting hairs -- than the 10 per  
14 cent.

15 THE CHAIRMAN: The 10 per cent, you say, is  
16 not enough.

17 COMMISSIONER PERRY: You appear to endorse  
18 Mr. Capon, who is not only going to use a club, but he  
19 is going to use dynamite.

20 COMMISSIONER GRANT: May I ask one question  
21 on this debt load to which you referred. When you say  
22 you try to discourage a company from getting too heavily  
23 in debt, as against a small issue of common stock  
24 outstanding, are you influenced there more by the  
25 assets that are available to back up that debt, or are  
26 you influenced more by the earnings of the company?

27 In other words, say the assets were pretty  
28 well already covered but its earnings show that the  
29 bond interest on the debt which you are called upon to  
30 advise upon can be earned five to six times. Would you







1 say, "Yes, your bonds will receive a ready market. We  
2 think you can go ahead with a debt issue here"?

3 MR. JAFFRAY: We are primarily influenced by  
4 earnings, but that is the earnings over a period of  
5 time and not just the last year, or something like that.  
6 But we cannot ignore, in the overall picture, the  
7 relationship of debt to assets. In the studying of a  
8 situation I would say we approach it first from the  
9 earnings point of view, then second from the assets  
10 point of view. But both have to be considered.

11 THE CHAIRMAN: Mr. Stewart, before we move  
12 on I would just like to clarify one point. It has  
13 been indicated by these gentlemen that there are other  
14 reasons than taxation for the fact that Canadian  
15 securities sell at a higher price than United States  
16 securities. I think they put it that the equity yield  
17 is less.

18 We have referred to the tax reasons, the  
19 dividend credit and capital gains tax, and I was  
20 wondering what the other reasons might be besides  
21 taxation.

22 MR. BEATTY: One of the important influences  
23 in the 1950's, particularly the early 1950's, was the  
24 flight of capital from Europe, due to communistic  
25 aggression, and a similar attraction of capital on a  
26 much more minor scale from the United States, due to  
27 inflation. That is a typical factor. Another, of  
28 course, is our tremendous demand for capital to  
29 develop our country and our small accumulated pool of  
30 savings when compared with the pool of savings available





1 in older countries, where these savings were accumulated  
2 before they had income tax.

3 THE CHAIRMAN: If we have not as much wealth  
4 saved up as the United States, I would have thought  
5 our demand would have been smaller, not greater.

6 MR. BEATTY: Were it not for these other  
7 factors.

8 THE CHAIRMAN: But you spoke about those as  
9 being in the 1950's.

10 MR. BEATTY: Yes.

11 THE CHAIRMAN: And I think the condition  
12 still obtains; I think there is still a differential  
13 in favour of Canadian equities, is there not?

14 MR. BEATTY: Yes, there is. I think the  
15 supply of equities has perhaps not extended as rapidly  
16 as the demand.

17 THE CHAIRMAN: If the supply were increased,  
18 the price might come down?

19 MR. BEATTY: Yes.

20 COMMISSIONER PERRY: I think we have to  
21 concede too that the difference in the level of  
22 interest rates is at least partly a reflection of the  
23 monetary policy, and the Bank of Canada could level up  
24 our interest rates with the United States rates if  
25 they wished. At the present time it is not part of  
26 our policy to do that.

27 THE CHAIRMAN: I was curious as to what is in  
28 the national interest with regard to equities. Is it  
29 for higher prices for equities, or lower prices?

30 MR. GLASGOW: If I might speak to that, Mr.





1 Chairman, I do not think it is a matter of price. It is  
2 a matter of making them more attractive to the Canadian  
3 investor. We are faced now, whether we like it or  
4 not, with the interest equalization tax. Today people  
5 are influenced by the growth factor and the fact that  
6 Americans or foreigners will buy our securities. That  
7 may be taken away from us as a result of the tax on  
8 the purchase of Canadian securities. Regardless of the  
9 rate, I think that to make them more attractive to  
10 Canadian investors is going to be one of the answers  
11 that everyone is searching for.

12 THE CHAIRMAN: This is an area in which I  
13 find myself somewhat lost. I would have thought that  
14 what made it attractive was the price of the market, and  
15 if the price of the market is high the securities are  
16 more attractive, and if it is generally high for  
17 Canadian securities, Canadian securities are generally  
18 attractive. Yet we keep on saying they should be more  
19 attractive so that more Canadians will buy them.

20 To make them more attractive, surely the  
21 price will go up and in the net result they will not be  
22 more readily available?

23 MR. GLASGOW: Do you not think that with the  
24 tax credit -- supposing there was a tax credit to a  
25 corporation and they are going to increase their  
26 dividend pay-out. There will be more incentive for  
27 them to pay it out if it gets back to what I think Mr.  
28 Perry was suggesting; that is, put a tax on undistributed  
29 profits. If you ease the tax on the amount going out,  
30 you do have more attraction even at a higher yield, if







1 you will.

2 THE CHAIRMAN: I suggest that the investor  
3 would look at the yield and at the impact of the taxes  
4 on whatever he is going to get. He would look at the  
5 net result and probably equate it in much the same way  
6 as he equates it now.

7 What will happen is that the added attractive-  
8 ness will result in a higher price for securities and the  
9 net result after taxes would be pretty much the same as  
10 it is now, would it not? Would not that be logical?  
11 If so, what is the purpose?

12 MR. STEWART: If I might ask a supplemental  
13 question, Mr. Chairman, it is this. Is a very  
14 important part of the problem not to increase the  
15 supply of equities? Is it not important that we do?

16 MR. GLASGOW: That we do what, Mr. Stewart?

17 MR. STEWART: Increase the supply?

18 MR. GLASGOW: I think it is most important  
19 that we do increase the supply.

20 THE CHAIRMAN: Rather than the attractiveness  
21 of the issues as they now are?

22 MR. BEATTY: Creating a supply would naturally  
23 result in lower prices and more attraction for the  
24 investor.

25 MR. JAFFRAY: All of this is leading to the  
26 fact that we cannot take any single factor as an  
27 isolated influence. We concur in the feeling that if  
28 dividends were on the same basis as interest, it would  
29 be much more likely that corporations would control  
30 their financing and investors would, we think,





1 receive much greater pay-out . It would be more  
2 attractive to more corporations to finance on an equity  
3 basis, and safer for them. That is an outside factor.

4 But the end result would be that you would  
5 get a much greater supply of equities in the market  
6 place. You would have higher dividends. You would  
7 probably have dividends more in line with debt factors;  
8 but you would have also the other things, such as  
9 growth prospects and what-not. But dividends today do  
10 not reflect the risk factor nearly as much as they do  
11 other factors, such as taxation.

12 MR. REAY: I think what we are driving at is  
13 this. I do not think the actual price as an absolute  
14 figure is what we are talking about. When we talk  
15 of attractiveness, I think people buy common stocks for  
16 two reasons. One is the dividend return that they get,  
17 and the other is the potential growth.

18 When we talk about attractiveness, I think we  
19 are talking about the attractiveness of the tax  
20 structure on a corporation so that your prospects for  
21 paying larger dividends and for greater growth over a  
22 period of years is greater and therefore attracts the  
23 investor to buy those common stocks.

24 THE CHAIRMAN: More investors seek to buy  
25 common stocks and the price of common stocks is going  
26 to go up?

27 MR. REAY: Yes.

28 THE CHAIRMAN: So something has got to be done  
29 about supply, I would think.

30 MR. REAY: Yes.







1 THE CHAIRMAN: So something has got to be done  
2 about supply, I would think.

3 MR. REAY: Yes.

4 MR. STEWART: I would like to raise with you  
5 two other points arising out of this question of the  
6 deductibility of dividends. You have expressed the  
7 view, which seems perfectly logical, that if dividends  
8 were made deductible, dividend pay-outs would increase.

9 However, it has been suggested that if a  
10 company really had a need for funds for expansion  
11 purposes, it would be disposed to retain earnings  
12 rather than increase its pay-out, notwithstanding that  
13 if it did increase the pay-out it would pay less tax.  
14 Do you think this is a valid argument?

15 MR. JAFFRAY: It depends. You have all  
16 sorts of factors involved. It depends on the degree  
17 of expansion, how big it is, and things of that nature.  
18 But also, if there was a material difference in the  
19 tax rates, then surely the influence of the shareholders  
20 to require pay-out and obtain the funds from the market  
21 place would have a bearing on the whole subject?

22 MR. STEWART: Yes, I would think so. Then  
23 it has also been suggested that to make dividends  
24 deductible will penalize new and growing firms as  
25 opposed to old and well-established firms; that the  
26 firms which are well established will be in a position  
27 to distribute a higher proportion of their earnings;  
28 that the ones which are new and growing will require  
29 to retain a higher proportion of their earnings for  
30 expansion purposes.





1 In the circumstances in which we in Canada  
2 find ourselves today, is this a significant consideration?  
3 In other words, if there is a discrimination here  
4 against the new firm, is this a type of discrimination  
5 that we should establish?

6 MR. GLASGOW: I do not think it is a type of  
7 discrimination, Mr. Stewart. I think we could probably  
8 give you, and should not, many instances of companies  
9 which are not paying a dividend at all. There are  
10 growth situations that the public will buy. Then you  
11 get something in the investment class which has  
12 reached a plateau; that is where the dividend factor  
13 comes in, but one cannot overlook the growth factor,  
14 coupled with the dividend factor, in any situation.

15 MR. REAY: I think that perhaps a very good  
16 example, if I may be specific, is Trans Canada Pipe  
17 Lines, where the common stock was issued in 1957 at  
18 \$10.00 and the market jumped up and down. They are  
19 now in a position where it is rumoured that they will  
20 be paying a dividend, and the price of the stock now  
21 is about \$35.00. The fact that it was known that they  
22 would not be able to pay dividends for some years was  
23 reflected in the price to the public of the original  
24 issue, but there were prospects, of course, of growth  
25 and dividends eventually. This dictated the original  
26 issue price. So anybody who bought stock at that  
27 time has had a very good return since then, even though  
28 the company has not paid a dollar in dividends.

29 MR. STEWART: Another argument which is  
30 sometimes put against making dividends deductible in





1 this country is that a very large proportion of our  
2 equities are held by non-residents of Canada. If we  
3 encouraged dividend pay-outs, therefore we are going  
4 to encourage, or produce, higher pay-outs to non-  
5 residents. Do you consider this as a significant  
6 factor?

7 MR. GLASGOW: Mr. Beatty might like to  
8 comment on that.

9 MR. BEATTY: I think an offsetting item is the  
10 withholding tax.

11 MR. STEWART: Yes, but the withholding tax at  
12 the moment hovers around 15 per cent, whereas if these  
13 dividends are made deductible you would be foregoing tax  
14 at, say, the rate of 50 per cent.

15 MR. BEATTY: We are talking about the foreign  
16 investor in Canadian securities. We would gain an  
17 added advantage to Canadians owning equities as against  
18 foreign investors in direct relationship to the extent  
19 to which earnings are paid out in dividends, because  
20 of the effect of the withholding tax.

21 MR. STEWART: I am thinking of the drain of  
22 funds from Canada through increasing the dividend  
23 payment.

24 MR. BEATTY: There would be a drain of funds  
25 from Canada, but the off-set would be increasing  
26 ownership of these securities by Canadians.

27 MR. STEWART: Gentlemen, this discussion has  
28 already covered to some extent the next heading --

29 THE CHAIRMAN: Do not move from this subject  
30 for a minute, Mr. Stewart. I am still unhappy about the







1 supply of securities. I can certainly see the merits of  
2 the argument that if we are going to have more Canadians  
3 owning shares, we had better increase the supply and  
4 thus make the prices of securities a little more  
5 attractive.

6 It has been suggested to us in many places  
7 that the way to do this is to encourage the distribution  
8 of earnings and to have companies go to the market and  
9 sell issues. I wonder if that really increased the  
10 supply any more than the accumulation of earnings in  
11 companies; and there is a huge flow of this, that  
12 adds to the value of existing equities outstanding. They  
13 are a great deal more value, the price goes up more  
14 behind the equities. Then when the price becomes unreal,  
15 the shares are split. I would have thought that the  
16 splitting of shares in the ordinary process of  
17 accumulation and supply, and so forth, would provide  
18 just as much paper to be traded, just as much value  
19 behind the paper to be traded as it ever would by  
20 taking money out of the companies and putting it back  
21 again. Is that not in fact so?

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1 MR. BEATTY: I do not think that is quite so,  
2 sir, in that the recipients of the dividends do not  
3 have this net amount of money available for investment.  
4 So that the shares issued to replace that money have  
5 a greater weight in relationship to the market than  
6 would have been the case had the earnings been retained.  
7 The tax has in fact now moved on to the recipient of  
8 the money.

9 THE CHAIRMAN: I would agree, but if the  
10 money is withdrawn and cannot be put back there is  
11 greater taxation. I am speaking only of this in terms  
12 of whether it increases the supply of equity shares.

13 MR. BEATTY: I think it increases it relative  
14 to the savings, yes.

15 MR. REAY: I think it also emphasizes greater  
16 freedom of choice as to how invest his money. If a  
17 company retains a large proportion of the profits, the  
18 shareholder ---

19 THE CHAIRMAN: I think that is a different  
20 point. Certainly that is the point Mr. Capon makes  
21 very clearly. Undoubtedly there must be something to  
22 that, but I was talking only of the supply of shares.  
23 Would there be more shares if more profit was taken  
24 out of the market operation? I suppose it depends on  
25 what you mean by more shares, whether you mean a greater  
26 number of units or a greater value of the total amount  
27 of equities outstanding in Canada. I would think the  
28 total value would be the same.

29 MR. REAY: I think the reason for stock splits  
30 is just that, to create usually a greater number of units







1 and this in turn seems to create greater activity.

2 MR. GLASGOW: But not necessarily the same  
3 number of additional shareholders would get a new issue  
4 of securities.

5 MR. REAY: No.

6 COMMISSIONER PERRY: You can see a dividend  
7 deduction working in the same way which would produce  
8 more shares, and yet not affect anything very  
9 fundamental in a company. In other words, if dividends  
10 were deductible, at least double the present amount of  
11 money could be paid out in dividends if you go back to  
12 the before tax rather than the after tax, which would  
13 permit you to double your equity capital and maintain  
14 the same rate of dividends on outstanding equity, and  
15 not be affected by the retention of earnings one cent.  
16 In this case you do have more pieces of paper outstanding.  
17 You have a broader market with equities. You maintain  
18 your dividends longer, yet you have not affected  
19 earnings retention policy one bit. That is unless my  
20 arithmetic is quite wrong.

21 THE CHAIRMAN: The difference coming out of  
22 the taxation.

23 COMMISSIONER PERRY: Yes. Would you then be  
24 declaring a dividend on what you used to claim taxes?

25 MR. JAFFRAY: There is a rather interesting  
26 situation with a company the name of which I might  
27 mention, Alberta Gas Line, which is operated on a cost  
28 of service basis. Its customers pay the income tax.  
29 Therefore, financing decisions are based on business  
30 decisions. Because its revenue is contractual it can





1 go to a higher percentage debt than a non-contractual  
2 kind of enterprise. Nevertheless, if you follow its  
3 history and follow the future history it will increasingly  
4 pay out a high percentage. It has now and is now paying  
5 out a high percentage of its income, and it is doing  
6 its financing on a basis of equity, then a certain  
7 amount of debt, then a major issue of equity, then  
8 debt. Interestingly enough, the debt goes more into  
9 the hands of the larger investor and the foreign  
10 investor, the U.S. The public, the Canadians, are the  
11 large holders of the equity. There is a company whose  
12 financial decisions need not be influenced by taxes.

13 COMMISSIONER GRANT: That is also a company,  
14 Mr. Jaffray, where its financing decisions are not entirely  
15 of its own making, because it is a public utility and  
16 it has to go before a government board to have its issues  
17 approved, has it not?

18 MR. JAFFRAY: No, sir, not really. It does not  
19 have to have its issues cleared in the sense that the  
20 P.U.C. does.

21 COMMISSIONER GRANT: No, not in the United  
22 States, but in Alberta.

23 MR. JAFFRAY: But that kind of clearance.

24 COMMISSIONER GRANT: The equivalent of the  
25 Alberta Public Utilities Board, is it not?

26 MR. JAFFRAY: The Alberta Public Utility Board,  
27 for example, has never set its rate of return. It has  
28 paid a rate of return under its existing contract of  
29  $7\frac{1}{2}$  per cent.

30 COMMISSIONER GRANT: But if it exceeded that the





1 Board might step in. Or, if it exceeds it by very much  
2 I think the Board has the power to step in.

3 MR. JAFFRAY: Yes, it has the power, but it  
4 has not as yet.

5 COMMISSIONER GRANT: No. But they give them  
6 a base return. If they keep within that they are all  
7 right. They are not interfered with.

8 MR. JAFFRAY: That is correct.

9 COMMISSIONER GRANT: It is the same with a  
10 telephone company. For instance, take Bell. When it  
11 puts out an issue it has to have that issue approved.

12 MR. JAFFRAY: More so.

13 COMMISSIONER GRANT: Yes. That is where they  
14 keep the ratio between equity and fixed debt. For  
15 instance, I know that in the case of Maritime Tel-and-  
16 Tel, when they go to the public for money they have to  
17 have the approval of the Public Utility Board. It  
18 invariably, not always but invariably, alternates  
19 between equity and fixed debt. Not necessarily but it  
20 does keep certain balance. That might be an idea which  
21 could be incorporated in our provinces in the Companies  
22 Acts, the acts of the provinces not of the dominion,  
23 that we should have a ratio existing between equity  
24 financing and fixed debt financing, and that if a  
25 company got out of line it would simply be subject to  
26 a penalty.

27 MR. JAFFRAY: One of the problems there is  
28 that every different industry would have a different  
29 ratio almost.

30 COMMISSIONER GRANT: Well, I am not advocating







1 that, but I do say that in order to maintain this ratio  
2 it might have to be under some government regulation  
3 rather than under the free flow of private enterprise.

4 MR. JAFFRAY: I think the illustration I  
5 mentioned is perhaps a little more interesting than, say,  
6 Bell Telephone or some such company, because for all  
7 practical purposes, because Alberta Gas Trunk Line has  
8 on business decisions kept itself within certain kinds  
9 of limits, it has not been subject to government  
10 regulation or government interference. If it applies  
11 to that line, by all means, yes, there are bodies who  
12 have the power to interfere; but business decisions  
13 and prudent financing decisions have made this  
14 unnecessary.

15 THE CHAIRMAN: Certainly in the case of Alberta  
16 they do not dictate what kind of securities they should  
17 issue.

18 Is this a good time to break for recess, Mr.  
19 Stewart?

20 MR. STEWART: Yes, if you wish, Mr. Chairman.

21 THE CHAIRMAN: Then we will stand over for  
22 ten minutes.

23 ---A short recess.

24

25 THE CHAIRMAN: Where are we, Mr. Stewart?

26 MR. STEWART: Mr. Chairman, we have been  
27 discussing this question of equity and debt financing,  
28 and I think the discussion in fact has covered, to  
29 some extent, the next point which begins on page B-2,  
30 which is capital market against internal financing.





1           There are one or two questions I should like to  
2 ask under that last mentioned heading just to be sure  
3 that I understand what the brief says. In paragraph 6  
4 and 7 on page B2 you are dealing with the question of  
5 cash flow and what has been done with it, with  
6 particular reference to the accelerated amortization  
7 which we have in this country. You say in the last  
8 sentence in paragraph 7:

9                       "However, if these provisions"  
10 -- which I take it are the accelerated amortization  
11 provisions --

12                   "did not exist and corporations  
13 were more dependant on outside  
14 financing, it would not lead  
15 to much greater equity offerings  
16 under the present tax structure".

17           Does that mean that you base this on the  
18 proposition that the tendency is for corporations to  
19 indulge in debt financing because of this interest  
20 deductibility, or just what are you getting at there?

21           MR. REAY: Yes, I believe that is the point.  
22 The company with the reduced degree of retained earnings  
23 would presumably have to come to market more often for  
24 more cash, but the tendency would be to direct that  
25 to debt financing.

26           MR. STEWART: This does not seem to me to be  
27 altogether consistent with what you were saying about  
28 equity ratios.

29           THE REAY: The tendency would be in that  
30 direction.







1 MR. STEWART: Then at the top of page B6,  
2 paragraph 15, after dealing with the proportions in  
3 which expansion has been financed by cash flow on the  
4 one hand and new issues on the other, you say:

5 "The relationship between  
6 corporate stock issues and bond  
7 issues is erratic".

8 Here again there is little evidence that the tax  
9 structure has affected their relative size. You have  
10 in mind there the type of consideration that we have  
11 already been talking about. Is that correct?

12 MR. JAFFRAY: Yes.

13 COMMISSIONER PERRY: There is an even stronger  
14 statement in paragraph 16:

15 "-- there is no reason to  
16 suppose that it is the present  
17 tax structure which should be  
18 blamed substantially for the  
19 situation that obtains".

20 MR. STEWART: Yes, that is so. Then going  
21 over to page B-8 ---

22 THE CHAIRMAN: Before leaving that section  
23 completely, I think I am correct in assuming that the  
24 corporation stock of net new issues, page B5, the first  
25 column of paragraph 13, contain no stock splits. If  
26 it contains no stock splits the ratio between equity  
27 financing, if one puts into equity financing retained  
28 earnings, where I think they belong, would be almost  
29 ten to one. I do not know whether we have retained  
30 earnings on that sheet. We do have retained cash flow,





1 which is not quite the same thing. I think retained  
2 earnings is something like \$3 billion, so we are getting  
3 close to ten to one. Is that correct?

4 MR. STEWART: Mr. Reay nodded his head  
5 affirmatively, Mr. Chairman.

6 Now, gentlemen, on page B8, at the top of the  
7 page, you are dealing with Mr. Goffman's article and  
8 you set out in the table the percentage of income which  
9 is paid in taxation by different income groups. I  
10 was wondering whether your decimal point in that table  
11 was misplaced. You appear to be suggesting that these  
12 various income groups are paying between two and three or  
13 just over three per cent of income in tax. Can you tell  
14 me where in Goffman's book that table appears?

15 MR. REAY: No, I am afraid I just cannot  
16 locate that for you, Mr. Stewart.

17 MR. STEWART: Then, Mr. Reay, perhaps I could  
18 refer you to page 15 of Goffman's book, where there is  
19 a table which purports to show taxes as a percentage of  
20 income by levels of government. The income classificat-  
21 ions are the same as in your table on page B8, but his  
22 percentages on page 15 for the aggregate taxation as  
23 a percentage of income for the group which is under  
24 \$1,000.00 is 21.9 per cent, for the group \$1,000.00 to  
25 \$2,000.00, 20.9 per cent; and then the figures are in  
26 the 20 per cent to 30 per cent range, or 20 per cent to  
27 25 per cent range, for the group \$5,000.00 to \$7,000.00.  
28 When we get to the \$7,000.00 and over group, the rate  
29 is 32.4 per cent. Perhaps it would be possible for  
30 you ---





1 COMMISSIONER PERRY: Might I just interrupt  
2 there. I am wondering whether you are interpreting  
3 the table as I am. I interpret this just to mean  
4 greater number of profits taxed, not total tax. •

5 THE CHAIRMAN: They say "Effective rates of  
6 tax in various income groups".

7 COMMISSIONER PERRY: It goes on to discuss  
8 the tax as though it were some single tax.

9 MR. STEWART: Can you say, Mr. Reay, whether  
10 we are considering here the effect of the corporate  
11 income tax on different groups, or whether we are  
12 talking about the burden of taxation generally?

13 MR. REAY: I believe this is intended to  
14 reflect the effect of corporation taxes.

15 MR. STEWART: I see. Just so as we can be  
16 clear perhaps you could by letter indicate to the  
17 Secretary of the Commission just where in Goffman's  
18 figures this is taken.

19 MR. REAY: Yes, sir, I will be glad to do that.

20 MR. STEWART: Thank you very much.

21 Mr. Chairman, I would propose, if you agree,  
22 to move on to section C, which has to do with withholding  
23 taxes.

24 COMMISSIONER PERRY: I do not think Mr.  
25 Goffman in his study intended to set forth these ratios  
26 as definitive; they were simply assumptions he made in  
27 working out his calculations.

28

29

30







1 He had in mind that he had to make some assumptions as  
2 to the incidence of the tax, and these are the ones he  
3 made. I think he would be quite prepare to concede  
4 that there are all kinds of other assumptions that he  
5 made.

6 THE CHAIRMAN: I think he looked at other  
7 estimates and made an assumption.

8 COMMISSIONER PERRY: Yes, I think that is all  
9 he was doing.

10 MR. STEWART: Now, gentlemen if we could move  
11 on to page C7, you set out there your recommendations  
12 with regard to withholding taxes, and in recommendation  
13 (c) you suggest that so far as dividends are concerned,  
14 there be a maximum rate of 15 per cent and that that  
15 rate be reduced to 10 per cent if a corporation has a  
16 degree of Canadian ownership or control.

17 Does that mean that you approve the principle  
18 which has been established in the 1963 amendments to  
19 the Act, of discriminating for this purpose between  
20 corporations which do, and corporations which do not,  
21 have a degree of Canadian ownership?

22 MR. REAY: Yes, that is so. We do not believe  
23 that the foreign shareholders should be penalized by  
24 having their rate increased from 15 per cent. We are  
25 content to see that reduction in the rate for Canadian  
26 shareholders.

27 MR. STEWART: Could I ask what he said you  
28 think this discrimination will have, first of all, on  
29 direct investment in Canada, and secondly on portfolio  
30 investment in Canada.





1 MR. GLASGOW: If I might say something here,  
2 Mr. Stewart, I would think that this assumes, as we  
3 say, the element of the removal of the interest  
4 equalization tax. It is pretty hard to estimate what  
5 this adjustment will do immediately, because I think we  
6 are faced with the equalization tax as long as it runs,  
7 until some counter measures are designed for it.

8 MR. STEWART: Could you attempt to deal with  
9 my question on the basis that that tax either does not  
10 come in or is removed?

11 MR. GLASGOW: I think we put a penalty by  
12 raising the tax to 20 per cent on those companies which  
13 do not have a 25 per cent degree of Canadian ownership.  
14 That has caused considerable difficulty and resentment,  
15 whereas, to get back to the carrot idea, we reduce it  
16 to 10 per cent and leave it as we have lived with it  
17 since 1960, at 15 per cent. I am afraid I am not  
18 answering your question. I do not know whether it is  
19 possible to put it down, Mr. Stewart.

20 MR. STEWART: The question was in two parts.  
21 Let us take them one at a time. You are supporting, as  
22 I see it, this type of discrimination. Do you consider  
23 that it will have a deterrent effect on direct  
24 investment in Canada?

25 MR. GLASGOW: I think it will have a deterrent  
26 effect, although we try to provide an incentive rather  
27 than a deterrent by suggesting we go back to the 15  
28 per cent. We have learned to live with that. We had  
29 a new addition of 5 per cent put into the situation.  
30 What will happen if the United States counteracts or







1 reacts to this 20 per cent, I could not say. Mr. Reay,  
2 would you like to add to that?

3 MR. REAY: I think that what we are trying  
4 to say is that there is no harm in encouraging Canadians.  
5 We feel that Canada does require, and will require,  
6 inflows of foreign capital for some years to come,  
7 and naturally we prefer to see it more in debt and  
8 less in equity.

9 But we need the capital and we should not  
10 discourage it by discriminatory withholding rates. I am  
11 not quite sure if I get the point of your question.  
12 You say: Will it discourage direct investment? I  
13 would think that to put the rate back to 15 per cent  
14 would restore the situation to what it was prior to  
15 December, 1960. Although the recommendations are  
16 spelled out in a number of sections, this is basically  
17 what we are suggesting, that we go back to the pre-  
18 December, 1960 level.

19 MR. STEWART: I think my question can be put  
20 this way. Let us assume that your suggestions were  
21 adopted. How is the foreign, direct investor going to  
22 look at this? It is going appear to him, I take it,  
23 that if he permits a degree of Canadian ownership he  
24 will be subject to a 10 per cent withholding tax on  
25 dividends, whereas if he does not, he is going to be  
26 subject to a 15 per cent withholding tax.

27 Is this type of provision going to be  
28 palatable to the foreign, direct investor in Canada?

29 MR. BEATTY: Has he not, perhaps, some kind  
30 of an off-setting privilege due to the convention of





1 the foreign country, as he had pre-December, 1960, if we  
2 go back to that arrangement?

3 THE CHAIRMAN: You are not suggesting the with-  
4 holding tax on dividends payable to a United States  
5 parent company be reduced to 5 per cent, are you?

6 MR. BEATTY: No.

7 THE CHAIRMAN: Well, that was the pre-1960 law.

8 MR. STEWART: Yes, sir.

9 THE CHAIRMAN: If you do not suggest that, I  
10 think it means that the Canadian taxes are roughly 50  
11 per cent. Fifteen per cent on balance is about  $7\frac{1}{2}$  per  
12 cent, and I think we can conclude that a person in the  
13 United States who is faced with this problem would compute  
14 it at about  $59\frac{1}{2}$  per cent.

15 Is that what you are saying is not discriminatory  
16 is something that we have learned to live with, and is  
17 all right? I would like to know what we are talking  
18 about.

19 MR. REAY: Yes, this is about what we are  
20 saying, that the 15 per cent has by and large become an  
21 accepted rate over the years, and we would like to see  
22 it remain at that and not increased to 20 per cent.

23 THE CHAIRMAN: Thank you.

24 COMMISSIONER GRANT: I understand from the  
25 brief that had the rate been held at 15 per cent, then  
26 the convention would have remained in force. But the  
27 fact that Canada put the rate to 20 per cent, without  
28 going into any further details, vitiated the convention  
29 and therefore that raises the possibility of the  
30 retaliation by the United States to the extent of the





1 maximum permitted under their laws where there is no  
2 convention, namely 30 per cent?

3 MR. REAY: Yes.

4 COMMISSIONER GRANT: So that in effect, had  
5 we held the line at 15 per cent we would still be acting  
6 under the convention and Canadian subsidiaries in the  
7 United States would not be subject to a 30 per cent  
8 withholding tax on dividends coming from the United  
9 States back to the parent company of Canada?

10 MR. GLASGOW: That is right.

11 MR. STEWART: Do you distinguish at all here  
12 between direct investment on the one hand and portfolio  
13 investment on the other? I appreciate that your  
14 suggestion is completely general; but will it have, in  
15 your opinion, any greater or lesser effect on the one  
16 type than on the other?

17 MR. GLASGOW: I would like to try to answer  
18 that, Mr. Stewart. I think we have learned to live with  
19 the 15 per cent since the baby budget, and people have  
20 become accustomed to it. That is fine. We do not  
21 lay ourselves open to the retaliatory action of the  
22 United States.

23 With regard to the 10 per cent, the intent  
24 there is to make it more attractive for American  
25 wholly-owned companies to make a part of their ownership  
26 available to Canadians. To that extent I think anyone  
27 in the investment business goes along with the June  
28 proposals as they were amended.

29 But what we would prefer to have is to leave  
30 the top area 15 per cent. To answer your question, Mr.







1 Stewart, I think we would disregard the interest  
2 equalization tax. We would have the same amount of  
3 American indirect investment coming in here.

4 MR. STEWART: Let me move on to your proposals  
5 with regard to the withholding tax on interest. Could  
6 I ask you, first of all, what is the logic behind  
7 exempting foreign pay interest from this tax while we  
8 tax domestic pay interest? If a withholding tax is  
9 justified, why is it justified where interest is payable  
10 in Canadian dollars but not justified if it is payable  
11 in American dollars?

12 MR. GLASGOW: I think the answer is that if  
13 we are obliged to go to the American market, we want to  
14 make it as attractive as we can. By putting a 15  
15 per cent tax on it we are negating the purpose of going  
16 to the American market, whereas if we do it on the  
17 domestic market we can do the job here.

18 MR. STEWART: Is this related to the point  
19 raised earlier, that if you are attempting to sell  
20 Canadian pay securities in the United States you have  
21 to pay a higher rate because of certain exchange  
22 difficulties at the time of maturity?

23 MR. BEATTY: Yes, it is related to that. If  
24 we can place an issue in the States for United States  
25 funds, we can do it at a rate closer to the American  
26 rate than the Canadian.

27 MR. STEWART: As I understand it, you are  
28 suggesting that obligations which are payable in either  
29 Canadian or American dollars at the holder's option  
30 should be exempt. If my understanding is correct, has





1 this provision ever been in the Act before?

2 COMMISSIONER PERRY: Do you get much option on  
3 pay financing going on at the present time; that is,  
4 before the Interest Equalization Act?

5 MR. BEATTY: There was some in the early  
6 1950's. Canadian Breweries did about \$40 million worth  
7 of optional.

8 COMMISSIONER GRANT: And quite a number of  
9 provincial issues.

10 THE CHAIRMAN: You say that the law provided  
11 for no withholding tax?

12 MR. BEATTY: That is right.

13 MR. STEWART: When you say this has existed,  
14 has it existed recently?

15 MR. BEATTY: I do not think there has been  
16 any since the late 1950's.

17 MR. GLASGOW: There were isolated instances  
18 a few years ago.

19 MR. STEWART: It was my impression that ---

20 MR. BEATTY: I think, the late 1950's.

21 MR. STEWART: But your recollection is that  
22 our Act has provided for exemption --

23 MR. BEATTY: Yes, since pre-war days too.

24 MR. STEWART: -- where the interest was  
25 payable in Canadian or American currency?

26 MR. BEATTY: Or any foreign currency --  
27 Canadian in London. An optional payment was exempt, and  
28 those issues still are exempt.

29 MR. STEWART: Do you consider that the  
30 application of the tax to discount on treasury bills has







1 had a real adverse effect on sales of such bills to  
2 non-residents?

3 MR. REAY: Yes, I think there is no doubt  
4 about that. The practical mechanics of dealing in  
5 treasury bills under the present law are so involved  
6 that there is practically no trade across the border.

7 MR. STEWART: You are suggesting, as I  
8 understand it, that interest on certain types of short-  
9 term paper should be exempt? This appears in  
10 recommendation (a), where you suggest that the interest  
11 on short-term finance company notes and commercial  
12 paper, and notes having a term of one year or less  
13 from date of issue to maturity, should be exempt.

14 Has this ever been done before?

15 MR. REAY: I do not know whether or not it  
16 has been done before.

17 MR. BEATTY: As a matter of fact, the taxing  
18 of the income on treasury bills was spelled out ---

19 MR. STEWART: I have now moved from treasury  
20 bills to the question of short-term paper.

21 MR. REAY: A certain amount of the finance  
22 paper is done on a discount basis. I think what we  
23 are driving at here is that the development of a money  
24 market in Canada has grown tremendously in the last  
25 five or six years and that the money market as such  
26 is a different area from the area of normal investment  
27 in bonds or shares, and that this money moved around  
28 rapidly from one place to another and it is all in  
29 relatively short terms, three months, six months,  
30 and generally up to a year.





1           What we are trying to say is that this should  
2 be treated as a different animal and not treated as an  
3 investment.

4           MR. BEATTY: It is a relatively new market.

5           MR. STEWART: Yes. I would like to move on  
6 to the question of municipal issues. You are suggesting,  
7 I take it, that the rate on municipal guaranteed issues  
8 be 5 per cent as opposed to 15 per cent. Again is this  
9 a new proposal?

10          MR. REAY: No, this is going back to the pre-  
11 December, 1960, basis.

12          COMMISSIONER PERRY: Is it not generally true  
13 that what you are suggesting here is the pre-December,  
14 1960, regime?

15          MR. REAY: Yes, sir.

16          MR. STEWART: In paragraph 25 you indicate what  
17 you have already mentioned verbally, that you are  
18 assuming that the United States interest equalization  
19 tax will ultimately be removed. If that tax does  
20 become effective, do you consider that it will have a  
21 very material effect on American investment in  
22 Canada?

23          MR. GLASGOW: It already has.

24          MR. STEWART: And the effect will --

25          MR. GLASGOW: The anticipation of the effect.

26          MR. STEWART: -- will continue, if it does  
27 come into effect?

28          MR. BEATTY: If it comes into effect as it has  
29 presently been prepared by the House Ways and Means  
30 Committee, there will be a resumption of the flow of





1 funds for investment in Canada. New issues, for  
2 instance, will be exempted and certain issues, where the  
3 main market is in the United States, will be exempted.

4 MR. STEWART: So that those changes you are  
5 suggesting in the withholding tax would have a  
6 beneficial effect even while the interest equalization  
7 tax is in effect?

8 MR. BEATTY: Yes.

9 COMMISSIONER PERRY: I think some people have  
10 said that the only way this tax can remain effective  
11 is that it not be enacted. It is the uncertainty which  
12 is giving it its main effect.

13 MR. REAY: That is true.

14 THE CHAIRMAN: On the direct point of  
15 investment in Canada, according to the figures \$525  
16 million are involved. If the present rate were  
17 continued, would that figure drop substantially because  
18 of the impact of this equalization tax?

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3 MR. JAFFRAY: Is the question, Mr.  
4 Stewart, has the equalization tax already had a  
5 material effect on the flow of U.S. funds into  
6 Canada?

7 THE CHAIRMAN: I drew attention to  
8 the \$525 million in 1962, wondering to what extent  
9 that would be reduced. I was thinking of 1963  
10 or the current year, by virtue of the equalization  
11 tax.

12 MR. JAFFRAY: Since the summer of  
13 1963 there has been virtually no sale of new  
14 issues into the U.S. market. That is since the  
15 introduction, or threat of introduction, of the  
16 interest equalization tax. When it goes through  
17 it is anticipated that it will lift to an extent.  
18 But then there is the problem of how large it will  
19 be allowed to go in the U.S. Even if it is allowed  
20 to go by the U.S. authorities to the same dollar  
21 volume, it appears that it has increased the  
22 effective interest rate by one per cent. This is  
23 taking the long term end of the finance.

24 MR. STEWART: Mr. Chairman, I should  
25 like to come back for a moment to your \$525 million  
26 figure, which appears at page B5. This is a figure  
27 for direct foreign investment.

28 MR. BEATTY: The equalization tax would  
29 have no effect on direct foreign investment.

30 MR. STEWART: That is what I want to  
confirm, that where there is a 10 per cent interest  
or more in the Canadian company, the tax does not  
apply.





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3 THE CHAIRMAN: Thank you.

4 MR. STEWART: I propose, unless the  
5 Commission has further questions, to move on to  
6 Section D.

7 COMMISSIONER GRANT: Just before you do  
8 that I should like to score one or two things on  
9 page C8, where you advocate the amendment of Section  
10 106, to the effect that the withholding tax, despite  
11 the recent amendments, should be changed or restored  
12 to 5 per cent on provincial bonds and 5 per cent  
13 on municipal bonds, but would eliminate any with-  
14 holding tax whatsoever on interest payable in  
15 foreign currency or bonds guaranteed by the govern-  
16 ment of Canada.

17 Let us assume that that legislation  
18 was designed to keep the governments, the respective  
19 governments, from financing in the United States;  
20 in other words, from going to New York. The effect  
21 of that is that the government of Canada says, in  
22 its wisdom: "There is enough money in Canada here  
23 for your purposes; therefore we want you to do your  
24 financing in Canada. We are going to make it  
25 difficult for you to go to the United States".

26 The result has been that we do not see  
27 our provincial governments or municipalities now  
28 going to New York for their financing. I think you  
29 agree with that?

30 MR. REAY: Yes.

COMMISSIONER GRANT: You probably would  
have no quarrel with this were it not for the fact  
that you feel that this dries up a source for placing







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3 these bonds. In other words, the United States  
4 investor is not going to be interested in buying  
5 Canadian bonds which are going to be subject to  
6 the present proposal of tax. Therefore, your  
7 purpose in wishing this present Act changed and  
8 restored to what it used to be is more from the  
9 point of view of being able to market Canadian  
10 government securities in the United States for  
11 United States investors than it is with marketing  
the whole issue in the United States.

12 MR. REAY: I believe that what we are  
13 concerned about is that the current problem being  
14 discussed in the papers is the attraction of  
15 Canadian equity investors. I think we rather  
16 feel that if we can sell some of our debt issues  
17 in the States it will leave Canadians with more  
18 money to invest in Canadian equities if we can  
19 make it attractive enough for them to do so. It  
20 is a matter of channelling the Canadians' money  
21 by not offering them so much of the Canadian debt  
22 securities. One reason for the differential in  
23 withholding rates is that many of the municipal  
24 issues, and I think provincial issues, are bought  
25 by exempt institutions in the States, and they do  
26 not have to pay normally income tax, and therefore  
have a good way of recovering the full 15 per cent  
withholding tax.

27 COMMISSIONER GRANT: Well, from a selfish  
28 point of view, from the point of view of The  
29 Investment Dealers Association, you would probably  
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3 welcome the fact that an impediment has been placed  
4 on the placing of issues in the New York market  
5 directly by the government. In other words, it  
6 gives the members of The Investment Dealers an  
7 opportunity to quote on these and to mark them in  
8 Canada.

9 COMMISSIONER PERRY: I think most of  
10 them have New York offices.

11 MR. GLASGOW: Also to the extent that  
12 there is only so much money in Canada. When we  
13 have exhausted that supply we have to go to the  
14 United States. I do not think that we welcome  
15 that, Mr. Grant.

16 COMMISSIONER GRANT: Well, the fact that  
17 we have a higher interest coupon on our bonds here  
18 than we have in the United States might offset to  
19 some extent the disadvantage that the American  
20 investor is under when he is subject to a with-  
21 holding tax.

22 MR. REAY: Yes, that is true.

23 THE CHAIRMAN: I think you have put it  
24 around the other way. You said that the coupon  
25 had to be adjusted on account of the tax, as I  
26 read the submission.

27 MR. REAY: In other words, if an American  
28 institution investor is offered a 5 per cent bond,  
29 the 15 per cent withholding tax is equal to .45 of  
30 one per cent. Actually it is three-quarters of  
one per cent. He already wants a differential in  
interest if the bonds are payable in Canadian funds,





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3 which adds another differential of three-quarters of  
4 a point, to give him the same after tax yield.

5 COMMISSIONER GRANT: My only point is  
6 that it is hard to accept your submission in this  
7 respect, that if it is good for Canada that we should  
8 do more of our debt financing in Canada there has  
9 to be some restriction placed on our governments  
10 going to a foreign country instead of placing  
those restrictions on the original issue.

11 MR. BEATTY: This structure which we  
12 propose places the decision more firmly on the  
13 federal government than on the other levels of  
14 government, and creates the situation where govern-  
15 ments as a whole have been more favourable than  
16 other bodies. It places the responsibility for  
their decisions where it belongs.

17 COMMISSIONER GRANT: If I understand your  
18 submission correctly, it is that we revert to our  
19 former position, which then means that there is  
20 nothing to prevent any of our provincial governments,  
21 or the Canadian government itself, from placing  
22 their issues in a foreign country if they wish to.  
That is, nothing before the amendment.

23 MR. BEATTY: Nothing except the  
24 differential in rate caused by the withholding tax.

25 COMMISSIONER GRANT: It was the rate  
26 in effect when they did place the issue.

27 MR. BEATTY: Yes.

28 MR. STEWART: Now, gentlemen, Section D  
29 of your brief deals with the deductibility of financing  
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3 expenses, and I should like to put one or two simple  
4 cases to you just to be sure that we understand  
5 the matter. The first case is this. Let us assume  
6 that the obligations are issued by a company to an  
7 underwriter at 97, and then sold by the underwriter  
8 to the public at 100. Your point, as I understand  
9 it, is that as the underwriter is going to pay tax  
10 on the three points, the borrower should be  
11 permitted to deduct the three points. Is that  
12 correct?

12 MR. REAY: Yes.

13 MR. STEWART: Let me give you another  
14 case. In this case the issuing price to the  
15 underwriter is 96 and the sale price to the public  
16 is 99. There your suggestion, as I understand it,  
17 is that the spread, at any rate between 96 and 99,  
18 should be allowed to the issuing company as a  
19 deduction. Is that correct?

19 MR. REAY: Yes.

20 MR. STEWART: I think perhaps you go  
21 further and suggest that the whole four points be  
22 allowed to the issuing company as a deduction. Is  
23 that correct?

24 THE CHAIRMAN: Is this paragraph 19,  
25 Mr. Stewart?

26 MR. STEWART: I was looking at Section D  
27 as a whole, Mr. Chairman. When we look at page D9,  
28 recommendation (b), the second sentence is:

29 "We suggest that all expenses related  
30 to raising debt capital, including  
discounts representing a commission





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3 to an underwriter, and/or part of  
4 the compensation to a lender, should  
5 be allowed as a deduction."

6 MR. REAY: That is correct. I was  
7 trying to find the word in the main part that  
8 perhaps amplified that, but I believe that is so.  
9 Our reason behind that is that the issuing company  
10 has to repay \$100.

11 MR. STEWART: Yes.

12 MR. REAY: In due course this extra  
13 dollar is part of his cost for borrowing the money.

14 MR. STEWART: Are you suggesting that  
15 anyone should be taxable on their extra point?

16 MR. BEATTY: You would certainly have  
17 to have some limitation on this.

18 MR. STEWART: That is what I am coming  
19 to, Mr. Beatty. You appear to be suggesting that  
20 the company, in the simple second case I have given  
21 you, should be entitled to deduct the whole four  
22 points, and as investment dealers you cheerfully  
23 are prepared to assume liability for tax on three.  
24 However, I am wondering who will be taxed on the  
25 balance of the discount, because if anyone is going  
26 to be taxed on the balance would there not be a  
27 considerable incentive to issuers to issue bonds  
28 at substantial discounts?

29 MR. BEATTY: Well, there is currently  
30 a provision in the Income Tax Act which limits the  
extent to which a discount can be used as a tax-free  
income. That limitation is 50 per cent of the con-







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3 tractual rate of interest. Presumably that would  
4 apply in this case as well.

5 MR. STEWART: Which provision are you  
6 thinking of here? Are you not thinking of Section 7  
7 (2), which you refer to in your brief?

8 MR. BEATTY: Yes.

9 MR. STEWART: Does that not apply only  
10 to a restricted number of issuers? Looking at  
11 Section 7 (2), at the moment the opening words  
12 appear to confine the scope of the section to persons  
13 exempt from tax under Section 62, which would include  
14 people like charities, a non-resident person not  
15 carrying on business in Canada, or a government,  
16 municipality, or municipal or other public body  
17 performing the function of government. So that  
18 this would not apply to the ordinary corporate issuer.

19 MR. REAY: As it stands, that is correct.  
20 I think there would have to be some limitations,  
21 but there is not the incentive now to issue at  
22 large discounts because of the lack of deductibility  
23 of the discount.

24 COMMISSIONER GRANT: Section 7 (2) has  
25 application here, has it not?

26 MR. STEWART: That applies only to a  
27 restricted number of issuers. It does not apply  
28 to the ordinary corporate issue.

29 MR. GLASGOW: I think, Mr. Stewart,  
30 that Section 7 (2) provides, in effect, for an  
obligation to issue at a discount after December 20,  
1960, by a tax exempt person, corporation, or govern-  
ment body. That carries a rate of less than 5 per





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3 cent where the yield resulting from a discount  
4 exceeds the coupon by more than one-third. So that  
5 that would not apply to a rate better than 5 per  
6 cent.

7 MR. STEWART: If you are looking at  
8 the section, Mr. Glasgow, I think you will find that  
9 the description of it at the bottom of page B5  
10 may not be completely accurate if the word  
11 "corporation" is supposed to refer to all  
12 corporations. However, that is something which  
13 you can check.

14 May I ask you this. We had some  
15 submissions on this point not long ago from the  
16 Canadian Institute of Chartered Accountants. They  
17 suggested that discount be dealt with in two ways.  
18 They suggested that the underwriters' portion should  
19 be allowed to the company as it is brought into  
20 income by the underwriters concerned. Then they  
21 dealt with the balance of the discount which in  
22 the second example I gave you would be the one point  
23 between 99 and 100. They suggested that this  
24 portion be deductible to the extent that it does  
25 not exceed the difference between par and the  
26 discounted value of the security if the security  
27 were issued at one-quarter of one per cent lower  
28 coupon rate than it is in fact being issued at.

29 As I understand that suggestion, it  
30 would mean that if there is a 6 per cent issue of  
corporate bonds at a discount, and these bonds are  
resold to the public at a discount, you would  
then consider the spread in price if those bonds





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3 were issued at 5 3/4 per cent. If what you might  
4 call the public's portion of the discount did not  
5 exceed that spread, then it would be allowed to  
6 the issuing company.

7 My first question on that basis would be:  
8 If we assume a 6 per cent issue on the one hand  
9 and apply this rule of determining the discounted  
10 value, if the rate were 5 3/4, what roughly would  
11 the difference be?

12 MR. BEATTY: 2 1/2 per cent for a 20 year  
13 bond.

14 MR. STEWART: So that that would mean,  
15 on this suggestion, that as long as the cost of  
16 the underwriter's portion of the discount on that  
17 type of issue did not exceed 2 1/2 per cent, this  
18 should be allowed the company. As far as you are  
19 concerned, does that suggestion make sense?

20 MR. BEATTY: We would go along with  
21 that. It would serve most purposes.

22 MR. REAY: I think that what we were  
23 driving at is this. Our difficulty in finding our  
24 way around is that this was written some time ago,  
25 this brief. I would have to go back to refresh  
26 my memory, but I think that we were concerned with  
27 simplicity of the administration, that the bonds  
28 once sold tend to change hands thereafter. They  
29 have a relatively long term life, say 20 years, and  
30 they may pass through a number of hands between the  
time of issue and the time of maturity. The price  
at which they change hands varies, of course, with







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3 interest rate at the time the transaction is  
4 effected. Therefore, although the issue may be  
5 originally sold at 99, it may change hands at 102,  
6 or at 95, or at almost any price. The problem of  
7 trying to follow this one point over the 20 year  
8 life of the bonds becomes very difficult in practice.

9 MR. STEWART: I am sure that it would be  
10 practically impossible. Yet I can see that if this  
11 type of suggestion you are making was seriously  
12 considered there would have to be some limitation  
13 on the amount of discount.

14 MR. REAY: Yes.

15 MR. STEWART: I was just anxious to have  
16 your reaction to this one-quarter of one per cent  
17 spread idea.

18 MR. GLASGOW: It sounds very reasonable,  
19 I think.

20 MR. STEWART: You also suggest that  
21 premiums should be allowed. I take it there that  
22 it would also be reasonable that there should be  
23 some limitation on the amount of premium which should  
24 be allowed. I have not thought this through, but  
25 it may be that an allowance of premiums without  
26 restriction might be open to the same sort of  
27 abuse as the allowance of discounts without restriction.  
28 Would that be possible?

29 MR. BEATTY: That is possible. The rule  
30 of thumb there is that the lender requires approxi-  
mately the dollar amount of one year's interest as  
his protection against premature call. So that would





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3 be the limitation.

4 MR. STEWART: Would it be feasible if  
5 premiums are being allowed to the issuing company  
6 to tax premiums in the hands of the recipient, or  
7 would this be subject to the same problem to which  
8 Mr. Reay has referred?  
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3 MR. STEWART: As bonds are presumably  
4 turned over, you would not know who to tax and how  
5 much to tax a particular person.

6 MR. BEATTY: That is right.

7 MR. STEWART: Would it not be fair to  
8 tax the ultimate recipient of the premium?

9 MR. BEATTY: I do not think that would  
10 be fair. He must have paid the commission of the  
11 premium in excess of its face value.

12 MR. STEWART: Well now, I would like  
13 to ask you a question about commissions on shares.  
14 Do they present the same type of problem as discount?  
15 One reason I asked the question is that if we are  
16 talking about shares, I take it they are not issued  
17 at a discount and the way the underwriter is  
18 remunerated is by the payment of the commission.

19 MR. REAY: Par value shares are not  
20 issued to the underwriter at a discount, no. The  
21 underwriter is paid a commission depending on the  
22 other factors. The commission may be greater than  
23 his profit. He, in turn, may resell them at a  
24 discount. In other words, \$100 par value share  
25 is purchased by an underwriter at \$100. He has  
26 in turn paid a commission of perhaps \$5, but he  
27 in his turn may resell these shares at \$98 to the  
28 public so that his profit is the difference between  
29 the commission and discount.

30 MR. STEWART: So that on that basis the  
problems with respect to commissions on shares would  
be somewhat similar to those on the issuance of





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3 obligations.

4 MR. REAY: We feel that the portion of  
5 the commission representing underwriter's profits  
6 should be allowed as an expense. The matter of  
7 the discount is somewhat different, the net discount,  
8 because there is no fixed time of repayment.

9 THE CHAIRMAN: That is, a reduction in  
10 the amount received from the sale of the stock as  
11 such is not really an expense at all. Is that what  
12 you are saying?

13 MR. REAY: It may not be the company,  
14 perhaps theoretically, never calls the stock. In  
15 other words the company, taking the same example,  
16 put out a \$100 par value share. It only receives  
17 \$95, but \$3 of that \$5 is the underwriter's spread  
18 in profit and is, in effect, a cost to the company.  
19 The other \$2 is not necessarily because the shares  
20 may remain outstanding ad infinitum.

21 THE CHAIRMAN: It is not because the  
22 company has received \$98 for its shares. It has  
23 incurred expenses of \$3 which ought to be written  
24 off.

25 MR. REAY: That is correct. If they  
26 do some time in the future call the shares, of  
27 course, they would be obliged to repay \$100.

28 MR. STEWART: The company in fact has  
29 only received \$95.

30 THE CHAIRMAN: The point I was making  
to Mr. Reay was while the company has received \$95,  
that is perfectly true, it has brought into its  
capital, I think, \$100. It would have brought





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3 in \$98 and taken off a charge against expenses of  
4 \$3 so its capital account would be \$98.

5 MR. STEWART: The \$100 would be reduced  
6 on the basis that the shares are issued at \$100  
7 but in fact they must pay commission on the shares.

8 THE CHAIRMAN: I am sorry.

9 MR. STEWART: So that the company is  
10 purporting to pay a commission of \$5, all of which  
11 is not retained by the underwriter. As far as  
12 the underwriter is concerned, he is paying \$100.  
13 He is receiving \$5 by way of so-called commission  
14 if you like. He is sustaining a loss of \$2 on  
15 the resale of the shares.

16 THE CHAIRMAN: There would be \$100  
17 in the current stock account. There would be  
18 \$5 less somewhere on the company's books of which  
19 \$3, you are proposing, would be deducted for tax  
20 purposes.

21 MR. REAY: Yes.

22 MR. STEWART: I think Mr. Reay is  
23 proposing \$5 be deducted for tax purposes. What  
24 obviously has to be considered is whether if it  
25 is reasonable to allow \$3, it is also reasonable  
26 to allow \$2, and if so, what limitation are we  
27 going to place?

28 MR. REAY: I do not believe, Mr. Stewart,  
29 we are suggesting that the \$3 underwriter's spread  
30 be allowed but that the \$2 not be allowed, because  
there is no fixed time of repayment. In the case  
of debt securities there is and is more or less







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3 security that the company will have to pay out of  
4 that extra dollar or two when they redeem their  
5 debt, but there is no fixed time for repayment  
6 of shares.

7 THE CHAIRMAN: This is after all  
8 capital in stock. It is not a liability.

9 MR. REAY: Yes.

10 MR. STEWART: Well now, how do you  
11 explain in these circumstances the fact that as  
12 appears from your table on page D8, the underwriters'  
13 portion of this commission, if we can call it that,  
14 the portion that the underwriter retains of this  
15 commission is not allowed in countries such as  
16 Great Britain and United States.

17 MR. REAY: I think the answer to that  
18 is probably we feel that they are just as far behind  
19 the times as Canada. Perhaps they should change  
20 too.

21 MR. STEWART: I think the other major  
22 question you raise in this section of your submission  
23 has to do with the deductibility of interest of  
24 money which is laid out to produce tax exempt income.

25 Again, so that I can be sure we under-  
26 stand each other, I would like to put a simple  
27 proposition to you. Let us suppose that we  
28 have an operating company X in a particular industry  
29 which has a competitor, company Y in that same  
30 industry, and company X would like nothing better  
than to take over company Y. It cannot finance  
this acquisition internally, so it borrows money





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3 from its bank or otherwise and proceeds to make  
4 a successful take-over bid and thus acquires all  
5 the shares of company Y and company Y is carried  
6 on as a separate operating subsidiary which pays  
7 taxes on its own income and let us assume that  
8 it makes profits and that it pays dividends to  
9 company X which under our present law are free  
10 from tax in the hands of company X.

11 With this background, my first question  
12 at any rate is would it be logical under these  
13 circumstances to permit company X to deduct from  
14 its income the interest it paid on the amount it  
15 borrowed to acquire the shares of company Y?

16 MR. REAY: In effect we are saying, yes.  
17 The interest on that money received by the lender,  
18 of course, is taxable. Therefore we feel the  
19 cost on the other side should be deductible.

20 MR. STEWART: This would mean in the  
21 example I have given you that company X would be  
22 able for tax purposes to reduce or deduct from  
23 its own operating earnings the full amount of  
24 its interest, notwithstanding that any income is  
25 received from company Y would not come into the  
26 tax calculation at all.

27 MR. REAY: That is correct.

28 MR. STEWART: Well, you seem to suggest,  
29 Mr. Reay, that if that change were made, it would  
30 not affect tax revenues materially. I suggest to  
you that if a company such as company X were  
permitted to make this deduction, it would have an







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3 extremely material effect on their incomes and on  
4 tax revenues.

5 MR. REAY: Why?

6 MR. STEWART: Why? Well, in the  
7 example I have given you let me assume that the  
8 pre-tax revenues of company X were \$5 million  
9 and that the amount it has paid for the shares  
10 of company Y is \$20 million, and that the whole  
11 amount was borrowed at 6 per cent. The amount  
12 of interest per annum is \$1,200,000. If company X  
13 is permitted to deduct that \$1,200,000 and if  
14 the effective tax rate is 50 per cent, the amount  
15 of its taxes is reduced by \$600,000 which on a  
16 pre-tax income of \$5 million is a substantial  
amount; and it seems to me this type of thing would  
be duplicated all over the country.

17 MR. REAY: Does not the lender of the  
18 money receive interest and pay taxes on it?

19 MR. STEWART: Yes.

20 MR. BEATTY: Why should it be taxed  
21 twice?

22 MR. REAY: Would not the \$20 million  
23 have been borrowed if it were not a deductible  
24 expense? Would not the \$20 million be borrowed  
25 if the \$1,200,000 were not an expense? Surely  
26 we have cases where X and Y are related or inter-  
27 related. The total amount of profit, let us say,  
28 earned by X and Y is the same. If they become  
29 related, the total amount of profit earned there  
30 is an absolute figure and then added to that we  
merely think the lender lending money and someone





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3 borrowing it, the lender pays tax on the interest  
4 and the borrower deducts it. Surely if we take  
5 the total picture, we have no change in the amount  
6 of tax that is paid.

7 MR. STEWART: Does your suggestion come  
8 down to this, that you are suggesting in Section D  
9 of this submission that the recipient of an amount  
10 must bring that amount into income and the payer  
11 of the amount should be permitted to deduct it?

12 MR. REAY: Generally speaking, yes.  
13 We have not attempted to carry that through going  
14 back to the question of discount on bonds because  
15 of the practical problems in pursuing it through.

16 THE CHAIRMAN: I do not think you can  
17 carry that through in many matters under the  
18 Income Tax Act. People who are selling machinery  
19 see the income from it and that is a capital cost  
20 on the other side. There are all kinds of incidents  
21 of that kind.

22 MR. REAY: These are, of course, not  
23 deductible in any case in one lump sum, but you  
24 can argue this over a period of years they are a  
25 capital cost allowance.

26 We are concerned, of course, that there  
27 seemed to be ways and means of getting around the  
28 intent of this section and that in fact it is not  
29 completely operative.

30 THE CHAIRMAN: I must say I was  
attracted by your recommendation here. I am  
concerned, however, with the illustration raised





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3 by Mr. Stewart in a different way actually than  
4 the way he raised it. We have a company here  
5 which is an operating company. It goes out and  
6 borrows a lot of money to buy shares of another  
7 company and that is a wholly owned subsidiary.  
8 That wholly owned subsidiary pays substantial  
9 dividends and the dividends go to offset the  
10 interest which the first company must pay on the  
11 borrowings. It seems to me in those circumstances  
12 the first company would as a result of that  
13 transaction pay less taxes than it was paying  
14 before it entered into the transaction because  
15 dividends paid are not taxable and the interest  
16 is deductible, under your proposition. Is it  
17 fair that a company by virtue of that transaction  
18 reduce its liability for tax?

19 MR. REAY: I do not think it is too  
20 dissimilar from the normal circumstance where a  
21 company has the same option of raising the debt  
22 or equity. If it chooses to raise debt, interest  
23 is deductible.

24 THE CHAIRMAN: I think the tax law can  
25 virtually assume that if it raises debt and  
26 increases interest, it does go to receive a benefit,  
27 and normally such benefits result in taxable income.  
28 In this case there is a clear exemption under the  
29 Act, an exemption of end company shares, which  
30 results, I think, under the circumstance described  
by Mr. Stewart in that company receiving a distinct  
tax benefit because of that transaction. Therefore,







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3 it would be encouraged to enter into these  
4 transactions.

5 MR. REAY: I think what we are saying  
6 is that the fact that government revenues would  
7 be nullified by the lender paying taxes on interest.

8 THE CHAIRMAN: Let us compare two companies  
9 that are exactly the same except one owns a  
10 subsidiary and receives dividends from that.  
11 That company would pay less tax than one which  
12 does not own a subsidiary. Is that fair?

13 MR. REAY: May pay less taxes, but  
14 it has to pay the interest on the borrowed money.

15 THE CHAIRMAN: It would pay less taxes  
16 under the circumstances described and it would  
17 deduct the interest on the borrowed money.

18 MR. REAY: It will deduct the interest,  
19 but they have to pay it. The effect of the tax  
20 is only half the amount of the interest.

21 THE CHAIRMAN: All right. They suffer  
22 a disability of having to pay interest but they  
23 receive the benefit of receiving dividends.

24 MR. BEATTY: It is a business decision  
25 that the buyer of company Y is aware we will have  
26 to borrow money in order to effect the purchase  
27 or sell equity or use retained earnings.

28 THE CHAIRMAN: I couldn't agree more,  
29 but what I want to find out is whether the taxation  
30 remains neutral, or whether the taxation interferes  
with a business decision. I think, under the  
circumstances described, it interferes with business  
decision.





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3 MR. STEWART: Mr. Beatty, if these  
4 inter-company dividends were not exempt, and company  
5 X went ahead with the transaction; the dividends  
6 which are received from company Y would be brought  
7 into company X. As far as company X is concerned,  
8 the dividends would offset the interest it paid  
9 to the bank. The bank would still be taxable  
10 on interest received.

11 MR. BEATTY: If dividends were a  
12 deductible expense, the problem would not exist.

13 MR. STEWART: This would complicate  
14 this still further.

15 MR. BEATTY: Yes.

16 MR. STEWART: I would like to look over  
17 the problem and the two examples which you give  
18 in Section D for illustrative purposes. The first  
19 is in paragraph 19 on page D6. You refer there  
20 to a possible means of avoidance of the non-  
21 deductibility of the underwriter's spread, and in  
22 the last sentence you say:

23 "The only thing which would seem to  
24 prevent wide scale adoption of this  
25 practice is perhaps the reluctance  
26 of the public to buy bonds at a  
27 premium".

28 Would part of that reluctance be due to this:  
29 that the purchaser you talk about there is paying  
30 tax on a 5 3/4 per cent coupon and ultimately  
having paid \$103 for this particular bond and,  
let us assume to make it easy, he holds it to







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3 maturity, he is going to take a three point loss  
4 on his investment.

5 MR. REAY: That is correct. His  
6 yield is  $5\frac{1}{2}$  per cent. Therefore he is paying  
7 tax on a cash income of  $5\frac{3}{4}$  and gaining no  
8 benefit from the three point loss which in  
9 effect is a deduction equal to one-quarter per  
cent of his yield, a matter of after-tax yield.

10 MR. STEWART: Moving on to paragraph  
11 24 ---

12 COMMISSIONER GRANT: Before moving on,  
13 Mr. Stewart, may I ask a question? It runs in  
14 my mind that the commission which in the example  
15 on paragraph 19 states is not allowed as an  
16 underwriter's commission is not allowed as  
17 a deductible expense; that actually the borrower  
18 does claim that but he claims it over the life  
19 of the issue because if it is a  $5\frac{1}{2}$  per cent  
20 issue, as it is here, for 20 years, he gets \$97.  
21 He is paying interest on the basis of par, which  
22 is the equivalent of  $5\frac{3}{4}$  per cent over the life  
23 of the issue, which is deductible as an expense;  
so is he not getting the benefit of the commission  
which he paid to the underwriter?

24 MR. REAY: To answer in terms of money  
25 rather than rates -- he is paying out X dollars  
26 in interest each year, which is deductible and at  
27 maturity he has to pay a further sum over that  
28 which he originally received which is not  
29 deductible.  
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2 COMMISSIONER GRANT: His interest obli-  
3 gation is only on the part of bonds?

4 MR. REAY: Yes.

5 COMMISSIONER GRANT: The Income Tax Depart-  
6 ment does not say to him, "You have paid out  $5\frac{1}{2}$  per  
7 cent interest on this bond, or its par value; but you  
8 have only received 97, and therefore we will only allow  
9 you to deduct the expense based on the money that you  
10 received." They do not say that?

11 MR. REAY: No.

12 COMMISSIONER GRANT: They allow him to  
13 deduct interest on money which he did not receive.  
14 Hasn't that the effect of amortizing the Commission  
15 over the period of the issue?

16 MR. REAY: No; this is why I say you should  
17 look at it in terms of money rather than rate. Whether  
18 the rate that he pays out is  $5\frac{1}{2}$  per cent or  $5\frac{3}{4}$  per  
19 cent, he is allowed to deduct the amount of money  
20 which he pays out as interest; but there is still the  
21 extra sum between the discount and par value that the  
22 borrower has to pay out at maturity. This is in  
23 addition to the dollar amount of interest that he  
24 has paid, and that amount is not deductible.

25 COMMISSIONER GRANT: I still think, with  
26 deference, that he is allowed a deduction on interest  
27 for money which he has not received, and that must  
28 have an amortizing effect.

29 MR. REAY: No; it has, in effect, in-  
30 creased his cost. In other words, if he is paying  
 $5\frac{1}{2}$  per cent --

COMMISSIONER GRANT: It increases his costs,





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2 for which he is permitted to deduct?

3 MR. REAY: That is right; but he is not  
4 allowed to deduct the discount.

5 COMMISSIONER GRANT: I think it has already  
6 been taken care of at maturity and there is nothing  
7 that could be done.

8 MR. REAY: No. In effect, suppose the  
9 interest cost was \$10,000. Whether you express this  
10 as a rate on \$100 or a rate on \$97, it does not really  
11 make any difference. The company pays out the  
12 \$10,000 and is permitted to deduct this from its taxable  
13 income. However, materially there is a further amount  
14 of money that must be paid out in excess of the amount  
15 the borrowers may receive, which is not deductible.

16 COMMISSIONER GRANT: At maturity of the issue.

17 MR. JAFFRAY: I do not know if this helps  
18 at all, but let us take the illustration of the  $5\frac{1}{2}$   
19 per cent bond at 97, or whatever it may be. Supposing  
20 the dollar differential is 97, or whatever it may be.  
21 Supposing the dollar differential is such as to equal  
22 a quarter of one per cent of the interest rate. If  
23 you moved the dollar price from 97, 96 or whatever it  
24 might be, up to par, the interest rate would go up by  
25 whatever the amount is. Let us, for this illustration,  
26 say a quarter of one per cent. That would be tax  
27 deductible. It does not become tax deductible by  
28 moving it from par down to 96, because the coupon has  
29 come down from, say,  $5\frac{3}{4}$  to  $5\frac{1}{2}$ . I am not sure if  
30 this confuses, or helps.

You can go to the other extreme. If you  
go to a premium -- and some private placements are







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2 done on this basis -- where the company sells at 103  
3 or 104, or whatever it might be, with a pretty healthy  
4 coupon which gives a net return on the same amount,  
5 the discount from 103 down to par then becomes tax  
6 deductible because it is buried in the coupon. It  
7 then becomes amortized. But if you just sell to the  
8 public a  $5\frac{1}{2}$  per cent issue at par, with three points  
9 discount or something like that, that is not a tax  
deductible item, I don't think.

10 COMMISSIONER GRANT: In the case of a bond  
11 that is sold at a premium, the borrower gets the  
12 benefit of the premium; he does not have to pay any  
13 interest on that?

14 MR. JAFFRAY: Because it is only sold to a  
15 --

16 COMMISSIONER GRANT: He gets the benefit  
17 of the premium, but he is not charged with paying  
18 interest on the premium?

19 MR. BEATTY: No.

20 COMMISSIONER PERRY: On this part of the  
21 discount that represents a non-commission which only  
22 appears at redemption, would you contemplate a deduction  
23 for that at the time of the original issue, or an  
24 amortization of it over some reasonable period?

25 MR. REAY: I think we would be content  
26 with amortizing it over the life of the debt.

27 COMMISSIONER PERRY: Supposing it were an  
28 equity which had no pre-determinable life?

29 MR. REAY: The underwriter's spread?

30 COMMISSIONER PERRY: No; the non-under-  
writer's spread.





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2 MR. REAY: We are not proposing that in the  
3 case of equity issues the underwriter's spread be  
4 changed.

5 COMMISSIONER PERRY: On a bond you would  
6 agree to amortization over the term of the bond?

7 MR. REAY: Yes.

8 MR. STEWART: Now, gentlemen, in paragraph  
9 24 on page D-7, you give another example, and towards  
10 the bottom of the page you propose a rate of 5.18 per  
11 cent. At the top of the next page you have an alter-  
native rate of 5.54 per cent.

12 If the way in which you arrived at the  
13 5.18 per cent can be explained extremely simply ver-  
14 bally, I would be grateful if you would explain it.  
15 On the other hand, if it is not capable of a very  
16 simple explanation perhaps you could write the Secretary  
17 a letter indicating just how you arrive at that rate  
and the other rate on the next page.

18 THE CHAIRMAN: I am sure the latter sug-  
19 gestion of yours, Mr. Stewart, would be perfectly  
20 acceptable, because I do not think the explanation  
21 is going to help us very much at the present time.

22 You were thinking of making the record  
23 complete, more than anything else, I believe.

24 MR. STEWART: That is right, Mr. Chairman.

25 MR. REAY: If you wish, Mr. Stewart, I  
26 will make a note of that and will send you our com-  
putations.

27 MR. STEWART: Thank you very much. Then  
28 I think we might pass on to Section E, Mr. Chairman,  
29 unless there are any other questions in regard to  
30







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2 D.

3 THE CHAIRMAN: Let us go on to Section  
4 E.

5 MR. STEWART: In Section E you are con-  
6 cerned about what has become Section 138(a) of the  
7 Income Tax Act and you recommend, in effect, that  
8 that particular provision be replaced by something  
9 along the lines of the United Kingdom provision, which  
10 is directed against surplus stripping. Is that the  
11 substance of it?

12 MR. REAY: Yes, I think that is the sub-  
13 stance of the latter part of the submission. We are  
14 more in favour of the elimination of the problem  
15 through the elimination of double taxation than we are  
16 of just closing the loopholes in certain distributions.

17 MR. STEWART: Would you agree that the  
18 United Kingdom provisions to which you refer are very  
19 broad in their application?

20 MR. REAY: Yes, I believe they are.

21 MR. STEWART: In paragraph 13, on page E+4  
22 you refer to differences between the United Kingdom  
23 provisions and Section 138(a) and you suggest that the  
24 United Kingdom rules are not retroactive, and it seems  
25 to me that you are implying that the Canadian rules  
26 are retroactive.

27 MR. REAY: I believe this was written  
28 before there was clarification of the law as it now  
29 stands.

30 MR. STEWART: I see.

MR. REAY: I believe there were rumours  
of clarification at the time, but it was not known





1  
2 how the law would be clarified when this was written.

3 MR. STEWART: Have you considered the  
4 detailed provisions of Section 138(a) as it has in  
5 fact been enacted; and if so, have you considered  
6 whether the section could be amended without too much  
7 difficulty to eliminate ministerial discretion alto-  
8 gether?

9 THE CHAIRMAN: Mr. Stewart, are you not  
10 taking the witness into a rather tough legal situation  
11 which he may not be competent to deal with?

12 MR. STEWART: That may be, Mr. Chairman.  
13 I do not want him to consider this afresh now, so to  
14 speak; I just wondered if they had thought about this  
15 particular point.

16 MR. REAY: No, not with regard to Section  
17 138 as it finally is law. I think our main concern  
18 was the broadness of our wording and therefore the  
19 uncertainty in the minds of businessmen as to what  
20 they could, or could not do in contemplating what  
21 they think are perfectly normal business transactions.

22 THE CHAIRMAN: May I ask a question in  
23 regard to this, Mr. Stewart. I assume that they looked  
24 at the English law and said that they believed that  
25 section was preferable to ours. You did not draw  
26 attention to the fact that that law provides for a  
27 prior ruling. It provides the right to a taxpayer  
28 to go and ask just how the discretion will be exer-  
29 cised.

30 Did you see that and decide it was not a  
good idea?

MR. REAY: No, Mr. Chairman; that is an





1  
2 area we have not covered in our brief. I believe we  
3 have commented on the matter of advance rulings in the  
4 part of our brief which is yet to be submitted to you.

5 THE CHAIRMAN: Thank you.

6 MR. GLASGOW: Mr. Jaffray might have some-  
7 thing to say on that, Mr. Chairman.

8 MR. JAFFRAY: We advocate this policy very  
9 strongly, and in the portion of our brief which we  
10 sincerely regret we just physically could not get  
11 completed in time we do suggest the ability of the  
12 taxpayer to get a prior ruling on any contentious or  
13 problem areas.

14 THE CHAIRMAN: You apply that to the whole  
15 act?

16 MR. JAFFRAY: We apply that to the whole  
17 act, yes, not just to one section.

18 MR. STEWART: Going back to page E-3,  
19 paragraph 8, you refer to dividend stripping through  
20 the amalgamation route and you suggest that the use  
21 of amalgamations for dividend stripping can be stopped  
22 by defining designated surplus to include the undis-  
23 tributed income of the predecessor companies.

24 I would like to put this to you, that if  
25 you have a parent which has two subsidiaries, and let  
26 us assume that both these subsidiaries have designated  
27 surpluses, then those two subsidiaries are amalga-  
28 mated I think your suggestion might be effective.

29 But suppose the two subsidiaries are  
30 amalgamated with the parent company. I take it that  
your solution does not extend to that particular  
problem?







1  
2 MR. REAY: I believe it does, Mr. Stewart.

3 MR. STEWART: Well, Mr. Reay, let me make  
4 sure that we understand each other. We have a parent  
5 company, "A", which has acquired two subsidiaries,  
6 called "B" and "C", each of which has a designated  
7 surplus, with the result that pre-acquisition earnings  
8 cannot be moved up from either "B" or "C" to "A" with-  
9 out the payment of tax. If "A", "B" and "C" are  
10 amalgamated, do we not eliminate designated surpluses  
altogether?

11 MR. REAY: I believe what we are driving  
12 at is that the designated surplus would move to the  
13 parent and remain in the parent as a designated sur-  
14 plus.

15 MR. STEWART: Suppose the parent has no  
16 designated surplus?

17 MR. REAY: It would have acquired one  
18 through the amalgamation of the subsidiaries "B"  
and "C".

19 MR. STEWART: But if the shares of the  
20 parent are held by individuals?

21 MR. REAY: I think you have got me.

22 THE CHAIRMAN: I do not think the point  
23 is of great importance, Mr. Stewart.

24 MR. STEWART: No, I do not think it is,  
25 Mr. Chairman. We are trying to explore this problem  
26 together, and this was one question that occurred to  
me.

27 THE CHAIRMAN: I think they are resting  
28 their case principally on the United Kingdom law,  
29 and I must say that is indeed a precedent when we are  
30





1  
2 considering one that is worth consideration.

3 MR. STEWART: Then in paragraph 9 you  
4 suggest that in order to stop stripping through the  
5 division of shares into voting and non-voting shares  
6 we might tackle the problem by referring to the amounts  
7 of dividends received, rather than the numbers of  
8 voting shares held.

9 Would there not be a risk there that the  
10 non-voting shares might come into the hands of more  
11 than one person, so that no individual did receive  
12 as much as one-half the voting shares?  
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2 Here again I am attempting to suggest that the real  
3 solution may be difficult to come by.

4 MR. GLASGOW: Is not the dollar amount paid,  
5 rather than the distribution of the dividend? Regard-  
6 less of the number of shareholders, if you pay \$10,000  
7 for one class it does not matter how many shareholders  
8 there are as compared with the \$2,000 for the other  
9 class. That has been the weakness, I think, in that.

10 MR. STEWART: We can consider that sug-  
11 gession further. Then I have no other questions on  
12 Section E.).

13 THE CHAIRMAN: Is there any purpose in  
14 proceeding with section F? It seems to me that we  
15 are not much concerned with provincial taxes.

16 MR. STEWART: I think that is so. I take  
17 it that in substance you gentlemen regard this as a  
18 nuisance tax which does not produce much revenue and  
19 does not serve any other purpose. Is that the sub-  
20 stance of it?

21 MR. REAY: That is about the substance of  
22 it, yes.

23 THE CHAIRMAN: Mr. Glasgow, we have no  
24 authority to recommend on provincial taxes. I am sure  
25 that if we were to do so our recommendations would be  
26 treated in the way they deserve, under those circum-  
27 stances.

28 MR. GLASGOW: We queried that, Mr. Chairman.  
29 We had the impression that it was the broad field of  
30 provincial as well as federal taxes.

THE CHAIRMAN: I think you are correct.  
We must look at all taxes in order to recommend on





1  
2 federal taxes. Obviously if one is concerned with  
3 the economic effects of taxation in Canada one has to  
4 deal with all taxes to which the Canadian taxpayers  
5 are subject. But I think that our instruction is that  
6 we report to the federal government only on government  
7 taxes.

8 MR. GLASGOW: I think our basic point, for  
9 what value it may be, is that it is a nuisance tax  
10 and is a duplication from one dealer to another.

11 COMMISSIONER GRANT: I think I might say  
12 that this duty is of greater annoyance to people  
13 living outside the province of Quebec and Ontario.

14 THE CHAIRMAN: Well, I hope you carry  
15 your complaints on provincial taxes to all provincial  
16 taxation commissions.

17 MR. REAY: We are doing so, sir.

18 MR. GLASGOW: This has been a great  
19 privilege, Mr. Chairman and gentlemen, to have had  
20 such an interesting hearing, and we hope that our  
21 comments and recommendations may be of some value  
22 to you. We look forward to sending along the second  
23 part of our study.

24 THE CHAIRMAN: Mr. Glasgow, I should like  
25 both to commend you and to thank you. I should like  
26 to commend you first for the very high quality of  
27 your submission. I am not surprised that your Taxation  
28 Committee was able to demonstrate the skill it did on  
29 account of the background of its Chairman, whom I  
30 would have suspected anyway would do very well. Thank  
you for the assistance you have given us today. We  
have all been looking forward to this a great deal,





1  
2 because we want to get into the area of the security  
3 market place, and this represents the first time that  
4 we have actually done so. This has been a most useful  
5 morning to us, and thank you very much indeed, gentle-  
6 men.

7 We will now stand over until 2:15 p.m.

8 --- Luncheon recess.  
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3 --- The hearing commenced at 2.15 p.m.  
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5 SUBMISSION OF: THE TORONTO STOCK EXCHANGE

6 APPEARANCES: Lieutenant General Howard D.  
7 Graham, C.B.E., Q.C., President.  
8 Marshal Stearns, Vice-President of  
9 the Board of Governors.  
10

11 THE CHAIRMAN: I think we are ready,  
12 Mr. Secretary.

13 THE SECRETARY: Mr. Chairman and  
14 Commissioners, the second brief today is being  
15 presented by the Toronto Stock Exchange. Lieutenant  
16 General Howard D. Graham, C.B.E., Q.C., President  
17 of the Toronto Stock Exchange, is here to speak  
18 to the brief, together with his colleague, Mr.  
19 Marshal Stearns, Vice-President of the Board of  
20 Governors.

21 Mr. Chairman, I would like to enter  
22 this brief into the record as Exhibit 303.  
23

24 --- EXHIBIT NO. 303: Brief of The  
25 Toronto Stock Exchange.  
26

27 THE CHAIRMAN: Good afternoon, Mr.  
28 Stearns and General Graham. We are delighted to  
29 have you and are very grateful for what you have  
30 already given us. We would like to examine with  
considerable care what you have put before us,  
and for that purpose we have asked our counsel,





1  
2  
3 Mr. Stewart, to put the questions.

4 Up until now we have not had as much  
5 inquiry into our security markets as might have  
6 been helpful. If we ~~have~~ not had the opportunity  
7 before, we have it this afternoon. I daresay  
8 our staff have done some work on it. Before we  
9 proceed to the questioning, would you gentlemen  
care to say anything to us?

10 GEN. GRAHAM: Mr. Chairman, ~~lady~~ and  
11 gentlemen, there is not very much that we have  
12 to say in the way of an opening statement. The  
13 gist of the brief and the burden of our argument  
14 is that we feel there should be more Canadian  
15 owners of shares of Canadian corporations, and  
16 we would like to see some changes in tax policy  
17 which would encourage more Canadians to buy Canadian  
shares.

18 We appreciate that as it happens we  
19 might have more buyers running after shares than  
20 is perhaps a good thing, and therefore as a  
21 corollary to having more share owners we appreciate  
22 that we need more shares. So we would like to see  
23 some change in the tax policy which would encourage  
24 the issuing of more equities by Canadian corporations.  
25 How this is to be done, of course, we appreciate  
is a very difficult matter.

26 We feel that there is a great scarcity  
27 of information with regard to share trading and  
28 share ownership in Canada. Since the brief was  
29 written we have uncovered a few statistics which  
30 we will perhaps give you a little later on in







1  
2  
3 answering some of the questions.

4 I am afraid that we have not made any  
5 specific recommendation. We have simply made  
6 suggestions, because we felt that to recommend  
7 that a tax should be 30 per cent, or something  
8 of that kind, would really be going further than  
9 we could possibly go with the knowledge that we  
10 have available to us.

11 THE CHAIRMAN: Thank you, General.  
12 When you suggest to us that there ought to be  
13 tax changes to encourage Canadians to own more  
14 Canadian shares, my mind immediately rushes to  
15 what is the ultimate. The ultimate would be to  
16 remove all taxes, I suppose, from corporations,  
17 from dividends; and what would be the result of  
18 that? Would Canadians own more shares? Would  
19 there be more shares? Would the price of shares  
20 simply go up? Would the market simply make an  
21 adjustment and would we end up with the same number  
22 of shares and the same number of people?

23 GEN. GRAHAM: These are the things  
24 that we do not know, Mr. Chairman, to be quite  
25 frank. Some of the suggestions we have made  
26 in the brief, such as increasing the tax credit  
27 or allowing a certain amount of dividends to be  
28 tax free completely, whether this would result  
29 in more people buying more shares, we do not know,  
30 and nobody else does really. But the assumption  
is that it would.

THE CHAIRMAN: We have heard many  
times that it would, but I do not clearly understand





1  
2  
3 why it would. As we proceed with our questions,  
4 perhaps Mr. Stewart will elucidate something from  
5 you and obtain some answers to this question.  
6 Yes, Mr. Stewart.

7 MR. STEWART: Thank you, Mr. Chairman.  
8 General Graham, I think you were present for at  
9 least the greater part of this morning's hearing,  
10 so that you will have heard some of the discussion  
11 that we had with the representatives of another  
12 organization. I will be able, as a result, to  
13 shorten my questions to some extent.

14 I take it that when we look at Canadian  
15 equities at the moment, it would be fair to say  
16 that, judged by the traditional yardsticks of  
17 value they are selling at generally high prices?

18 GEN. GRAHAM: Yes, I would say so.

19 MR. STEWART: That the yields on high  
20 grade or blue chip Canadian stocks are now materially  
21 lower than yields on bonds.

22 GEN. GRAHAM: Yes.

23 MR. STEWART: That this is a situation  
24 which in the past, at any rate, has been regarded  
25 as abnormal; that is, that stock yields should  
26 be below bond yields?

27 THE CHAIRMAN: How far back, Mr. Stewart?

28 MR. STEWART: Let us go back to the  
29 period prior to the introduction of the dividend  
30 tax credit, which I suppose may have had an effect  
on this in Canada. Up until, say, ten years ago  
I take it one would have expected that stocks would





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2  
3 sell on a higher yield basis than bonds; would that  
4 be correct?

5 GEN. GRAHAM: I would think so.

6 MR. STEARNS: On the basis of risk.  
7 That is, you have intimated the fact that the tax  
8 credit came in, which was a counter-balancing  
9 situation. This situation started from that.  
10 In other words, the spread narrowed and ultimately  
11 the equities went ahead of them because of the  
12 scarcity of them, we think.

13 MR. STEWART: Then, as was discussed  
14 this morning and as you have just suggested, when  
15 we contemplate increasing ownership of Canadian  
16 equities by Canadians we have to consider the  
17 supply situation as well as the demand situation?

18 GEN. GRAHAM: That is right.

19 MR. STEWART: Would it be fair to say  
20 that the suggestions you have made in your sub-  
21 mission are essentially directed at increasing  
22 demand rather than increasing supply?

23 GEN. GRAHAM: I think perhaps we  
24 emphasize increasing the demand more than we  
25 emphasize increasing the supply, although we  
26 have referred to increasing the supply by exempting  
27 dividends from corporation tax.

28 MR. STEWART: Yes. That particular  
29 suggestion might, as we were saying this morning,  
30 have the effect of increasing corporate distributions  
and increasing offerings by corporations of equity  
stocks?







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3 GEN. GRAHAM: We think that it should,  
4 yes.

5 MR. STEWART: Your first two specific  
6 proposals in paragraph 4 of your submission, starting  
7 at the bottom of page 2, relate to the granting  
8 to Canadian individuals of complete, or substantial  
9 exemptions from tax on dividends from Canadian  
10 companies.

11 GEN. GRAHAM: Yes.

12 MR. STEWART: Had you assumed in making  
13 those recommendations that the level of corporation  
14 taxes would remain the same?

15 GEN. GRAHAM: Yes.

16 MR. STEWART: Then would the adoption  
17 of your proposals not mean that there would be  
18 inequity; that is, a lack of equity, as between  
19 individuals with different types of income?

20 What I have in mind is that if you  
21 had two individuals who had incomes of \$20,000,  
22 one of whom obtained his income from salaried  
23 employment and the other obtained his from dividends  
24 from Canadian companies, these people would be  
25 subject to radically different taxation?

26 GEN. GRAHAM: Yes, I think that would  
27 be true. But is that not true now, to some  
28 extent at least?

29 MR. STEWART: I take it that what you  
30 have in mind is that at the moment the individual  
with the dividend income has the dividend tax credit?

GEN. GRAHAM: Yes.





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3 MR. STEWART: Whereas the other person  
4 does not. But you are going to accentuate this  
5 distinction quite materially?

6 GEN. GRAHAM: That is right.

7 THE CHAIRMAN: Of course, the theory  
8 now is that the dividend tax credit goes some way  
9 to offsetting double tax, and therefore tends to  
10 equate the investment income to earnings?

11 GEN. GRAHAM: That is right, Mr. Chairman.

12 MR. STEWART: Or to equate the taxation  
13 of corporate income on the one hand with the  
14 taxation of other income on the other?

15 MR. STEARNS: Might that also not lead  
16 to the person with the \$20,000 income looking to  
17 a saving to get himself in the position of making  
18 investments and joining the group of equity owners,  
19 which we think is highly desirable? It makes it  
20 more of an inducement for him to come in. It is  
21 not that he stands alone, but we hope this incentive  
22 will pry him loose and will mean his participation  
23 in that in which he does not now participate.

24 THE CHAIRMAN: Mr. Stewart is asking,  
25 "Would not this be discrimination?" You are saying,  
26 "Yes, it is discrimination, but we think it is in  
27 the country's interest to discriminate"?

28 MR. STEARNS: That is right. I do  
29 not think we can deny that it is discrimination.

30 MR. STEWART: At the moment I think  
we can take it that it is the well-to-do section  
of the community which is most likely to have







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2  
3 dividend income.

4 GEN. GRAHAM: Yes. Inquiries we have  
5 made indicate that one might expect that the higher  
6 the income and the more wealthy the individual,  
7 the more equities he owns.

8 MR. STEARNS: And in the United States  
9 there is another item; the more education, the  
10 more equity ownership.

11 THE CHAIRMAN: You saw that survey in  
12 the New York Stock Exchange the other day as to  
13 the distribution of ownership by income groups?

14 GEN. GRAHAM: Yes.

15 THE CHAIRMAN: What would be the position  
16 in Canada; have you any idea?

17 GEN. GRAHAM: No.

18 THE CHAIRMAN: Has anybody made a survey  
19 of the situation in Canada?

20 GEN. GRAHAM: We made a survey a year  
21 or two ago, but on a very small basis. I think  
22 only 700 people were questioned. They were all in  
23 the metropolitan area of Toronto. For what it is  
24 worth, I could give you some of the things we  
25 learned.

26 THE CHAIRMAN: I would like to have  
27 that information.

28 GEN. GRAHAM: The following information  
29 was obtained from interviewing 700 adults, men  
30 and women both, in the upper and the upper middle  
and lower middle income groups.

The lower income group was not surveyed  
and constitutes about 20 per cent of the national





1  
2  
3 total. In stating their choice of investment  
4 stock best for Canadian families, 48.6 per cent  
5 said government bonds; 21.1 per cent said life  
6 insurance; 16.7 per cent said mortgages; 6.1 per  
7 cent said bank account; 5.9 per cent said real  
8 estate, and 5 per cent said common stock.

9 THE CHAIRMAN: What was the question  
10 put to them? Do you have it there?

11 GEN. GRAHAM: I have not the exact  
12 question, except that I assume it was in the  
13 form of, "What type of investment do you think  
14 would be most suitable for yourself?"

15 MR. STEARNS: I think the question  
16 was, what was considered most suitable for family  
17 investment, and the answer was that only 5 per  
18 cent considered equity ownership.

19 THE CHAIRMAN: Would it not have to be,  
20 "The investment of your family's funds."?

21 MR. STEARNS: I think that could have  
22 been it. I am sorry, Mr. Chairman, but we have  
23 not the actual question.

24 THE CHAIRMAN: It might have been that,  
25 or it may have been related to a family. But I  
26 suggest that if you were framing your question  
27 for the purposes that you desired, it would have  
28 been directed to "your family".

29 MR. STEARNS: I think so. I am sure  
30 the answer reflected that, anyway.

GEN. GRAHAM: We felt that the survey  
in the United States would perhaps result in much  
the same percentages. I do not know whether this  
is right or not.





1 THE CHAIRMAN: Yes. It sought to solicit  
2 other information, namely to what extent people in  
3 the \$5,000.00 to \$10,000 brackets invested, the people  
4 in the \$10,000.00 to \$20,000.00 brackets invested, and  
5 so on. It was found to be encouraging that people  
6 down in the income scale were investing their money.  
7 Of course, the further up you went the higher proportion  
8 of people invested, as would be expected, but I was  
9 surprised to see people in relatively low income  
10 brackets were investors.

11 GEN. GRAHAM: I have the figures from the  
12 1959 United States survey, and people in the under  
13 \$3,000.00 income bracket, 2.5 per cent of them were  
14 shareholders. In the \$3,000.00 to \$5,000.00 bracket,  
15 5.6 per cent; \$5,000.00 to \$7,000.00, 6.2 per cent;  
16 in the brackets from \$7,500.00 to \$10,000.00, 14 per  
17 cent were shareholders. Then from \$10,000.00 to  
18 \$15,000.00, 15 per cent; \$15,000.00 to \$25,000.00  
19 you notice a big jump to 26.9 per cent; and then  
20 \$25,000.00 and over, 36 per cent. So it is evident  
21 that ---

22 THE CHAIRMAN: Your Canadian survey did not  
23 seek that kind of information, did it?

24 MR. STEARNS: We did not break it down to  
25 income groups, nor to the class of employment, nor  
26 to the general distribution of income. Our experiment  
27 was just a spot check of 700 people in metropolitan  
28 Toronto.

29 THE CHAIRMAN: You were not looking for that  
30 kind of thing?







1 MR. STEARNS: No, sir. I remember you  
2 mentioned to me the other day that you were interested  
3 in that, and we did our best and this is what we came  
4 up with. You have not got all of this material.

5 MR. STEWART: At the outset, at any rate,  
6 the adoption of these particular proposals would  
7 benefit the well-to-do classes in the community more  
8 than the others.

9 GEN. GRAHAM: That is right.

10 MR. STEWART: Have you considered what  
11 effect these proposals would have on the prices of  
12 Canadian equities?

13 GEN. GRAHAM: Mr. Stewart, as I intimated I  
14 do not think there is any doubt that the result of  
15 greater tax credits, unless more shares became  
16 available, would result in a low yield.

17 MR. STEWART: Yes. Would it also follow  
18 that if investment were shifted from bonds to stocks,  
19 not only would the price of shares tend to rise but  
20 the prices of bonds would tend to fall?

21 GEN. GRAHAM: I do not know. I think one  
22 would hope that there would be an off-setting adjustment  
23 there. But I would hope that eventually companies  
24 would issue more shares and have less debt financing,  
25 and since more shares were issued you would not have  
26 reduction in yield or increase in price of the shares.  
27 With your debt financing, I cannot say what the result  
28 would be, but I think it would hold it steady.

29 MR. STEARNS: Would not a lot depend on the  
30 amount of money available for investment and the limits?





1 We made the point that institutions are probably the  
2 most important share owners so far as dissipation in  
3 the control of Canadian companies is concerned. If  
4 they are limited and if they have available funds,  
5 perhaps they have enough to do that as well as take  
6 care of the debt situation.

7 MR. STEWART: Yes. There would be a  
8 tendency, I suppose, as we are now talking primarily  
9 about individuals in the upper income brackets --  
10 dealing with your recommendations (a) and (b) -- to  
11 shift into stocks or equities. If we looked at the  
12 consequences of that shift in isolation, as I  
13 appreciate we cannot, but thinking of that force alone  
14 I take it that as far as bond prices are concerned  
15 it could only have a weakening effect.

16 MR. STEARNS: Yes. There would be less  
17 money available for funds, that is right.

18 MR. STEWART: If the overall results turned  
19 out to be that the prices of stock rose and the prices  
20 of bonds either remained stationery or sell to some  
21 extent, is it possible that people in the low income  
22 groups would shift from stocks into bonds?

23 GEN. GRAHAM: Well, that is very difficult  
24 to answer.

25 MR. STEWART: I think it is a pertinent  
26 question, General, because if the object of this  
27 exercise is to encourage Canadian ownership of equities,  
28 and all we succeeded in doing was to increase the  
29 holdings of equities by the well-to-do, you would be  
30 accomplishing your objective only in a limited sense.





1 MR. STEARNS: I think we feel that the lower  
2 income tax group today could be more interested in  
3 debt than they are in equities. That situation would  
4 be perpetuated. In other words, they are attracted  
5 by the yield. Being in the low income tax group they  
6 are attracted by the yield of their bonds and debt  
7 securities and are not looking at the depreciation  
8 so much.

9 MR. STEWART: Have you any idea as to the  
10 net effect that this type of tax change would have  
11 on foreign investment in Canada, either in bonds or  
12 in shares?

13 GEN. GRAHAM: I do not think that we can  
14 express any opinion. We assume, though, that if more  
15 Canadians bought Canadian shares there would be fewer  
16 available for foreigners.

17 MR. STEARNS: You are assuming no  
18 equalization tax and that our biggest people might have  
19 the biggest interest in our market at the present  
20 time?

21 MR. STEWART: I would be perfectly happy to  
22 deal with the question without regard to the interest  
23 equalization tax. Therefore, let us forget about  
24 that for the moment. I am just speculating or asking  
25 you to speculate as to what the average foreign  
26 investor would be likely to do in the circumstances.  
27 If the prices of Canadian equities rose, presumably he  
28 would be less interested. If the prices of Canadian  
29 bonds sell, presumably he would be more interested  
30 in the bonds. I wondered if you had worked this out







1 in your mind and what you anticipated the net effect  
2 might be.

3 MR. STEARNS: I say that if you did not have  
4 the income tax credit it would be available to the  
5 Canadian shareholder. Obviously as they went higher  
6 I would presume that he would consider the bonds  
7 more attractive to him.

8 MR. STEWART: As far as Canadian investment  
9 abroad is concerned, Canadian portfolio investment  
10 abroad, I take it that the effect of this might be to  
11 cause some of that capital to be repatriated. Do you  
12 agree with that?

13 GEN. GRAHAM: Yes, I think that is the  
14 assumption.

15 MR. STEWART: These changes which you suggest  
16 in (a) and (b) would necessarily have some effect on  
17 the revenue. Have you estimated what that effect  
18 would be, and have you any thought as to how the  
19 deficiency would be made up?

20 GEN. GRAHAM: Mr. Stewart and gentlemen, that  
21 is the one reason why we were so cautious in our  
22 brief. We realized the revenue had to be found, and we  
23 have really done nothing more than to suggest ways  
24 in which we think a Canadian would be more inclined  
25 to buy Canadian equities. How far any government can  
26 go in meeting the suggestion we have made one does  
27 not know, of course.

28 COMMISSIONER WALLS: If I might just interrupt  
29 there, Mr. Stewart, I have worked out that in 1960 the  
30 income from dividends reported by individuals was





1 \$314 million. If you increase the dividend credit  
2 from 20 to 50 per cent, as suggested in (ii), it would  
3 mean a loss of revenue of almost \$100 million a year.

4 MR. STEWART: Thank you, Mr. Walls. If we  
5 move on to your recommendations with regard to the  
6 Canadian institutions which appear in paragraphs (c)  
7 and (d), you indicate, among other things, that you  
8 would like to discourage foreign investment by such  
9 institutions.

10 GEN. GRAHAM: Up to a point, yes. I would  
11 not want the Commission to get the wrong impression.  
12 It is not so much that we discourage the institutions  
13 from foreign investment, so much as that we would like  
14 to encourage them to put more into Canadian equities.

15 MR. STEWART: Well, so far as foreign  
16 investment by these institutions is concerned, do you  
17 consider that there is an adequate range of securities  
18 available in Canada for what we call, broadly,  
19 institutions?

20 GEN. GRAHAM: If I may speak first to this  
21 for a moment, frankly I do not know and I doubt whether  
22 anyone else knows. But I would say that if any  
23 large amount was made available by these institutions  
24 for the purchase of Canadian equities today, there  
25 might not be sufficient equities available short of a  
26 major disturbance in the market, increase in price  
27 and decrease in return, and so on. Our hope would  
28 be that some policy might be instituted which, over  
29 a period of time, would result in more equities being  
30 made available and more money being made available to







1 buy them than the money which is now coming from  
2 our own insurance companies and bigger companies, which  
3 perhaps are investing more in foreign securities and  
4 less in Canada. But this is not something which would  
5 happen overnight, and how it can be done we do not  
6 know. Perhaps we are at fault in not knowing that.  
7 However, I do not know that anyone knows it. Perhaps  
8 it is time that tax policy should be designed to try  
9 and see whether a change would result in what we  
10 should like to have in Canada, and what I believe  
11 the government would like to have.

12 THE CHAIRMAN: A greater supply of securities.

13 MR. STEWART: I am not sure, General, that  
14 I made my question clear. I was really concerned with  
15 this point. Let us look at this from the point of  
16 view of a Canadian institution which has equity  
17 funds available for investment. Presumably that  
18 institution wishes to give its policyholders, or  
19 whoever it is it is working for, the best investment  
20 portfolio it can. Can it acquire the best  
21 investment portfolio at the present time if it confines  
22 its purchases to Canadian equities?

23 GEN. GRAHAM: I really do not know the  
24 answer to that question, Mr. Stewart. Some of my  
25 associates who know more about investment of  
26 insurance funds than I do have suggested, and we have  
27 included the suggestion in our brief here in one  
28 of the paragraphs, that the number of equity  
29 investments which might be purchased by insurance  
30 companies, and so on, should be increased; that the





1 list has not been altered for a long time and needs  
2 reviewing. If that were done perhaps it would assist  
3 to some extent.

4 MR. STEWART: I have been reading articles  
5 in the financial press which are to this effect, I  
6 think, or which make these particular points: that  
7 there are some industries in which the manager of an  
8 investment portfolio would like to have representation  
9 which simply does not exist in Canada. There are no  
10 securities listed on Canadian stock exchanges in  
11 some industries.

12 Another point which I have seen made in the  
13 press is that if you were buying securities or shares  
14 in the quantities in which large institutions buy  
15 them, Canadian markets are so thin that it may not be  
16 good business to take positions in some Canadian  
17 securities.

18 GEN. GRAHAM: We realize that.

19 MR. STEWART: There is something in both  
20 those points, is there?

21 GEN. GRAHAM: Yes.

22 MR. STEWART: You are in agreement are you,  
23 Mr. Stearns?

24 MR. STEARNS: Yes, but there are rules  
25 relating to trustee investment. There are perhaps  
26 some companies where there could be relaxation of  
27 those rules, which would make more companies available  
28 to those institutions in which they can invest.

29 THE CHAIRMAN: When you talk of the thinness  
30 of the market, I suppose it means what is available to





1 buy? There just is not a sufficient supply.

2 MR. STEARNS: There are too many people  
3 chasing the same little companies. That is one of  
4 the problems.

5 THE CHAIRMAN: That is what I was coming  
6 to. What is the supply? We have been talking about  
7 that quite a lot. Are there any figures -- I  
8 suppose there are and I suppose they are obtainable --  
9 to show us quantitatively what is the total value of  
10 listed equities in Canada available for purchase?  
11 What is the turnover of these? What is the ebb and  
12 flow? What is the annual increase or decrease?  
13 Would it not be interesting to look at this supply  
14 and to see quantitatively whether there is a short  
15 supply: Perhaps figures are available which I just  
16 have not seen.

17 GEN. GRAHAM: Our friends from Montreal  
18 have that information in their brief, in the schedules  
19 I believe. It shows the growth of the equity supply  
20 from 1948 to 1960.

21 THE CHAIRMAN: I do not think it shows what  
22 I am looking for. When I talk of the quantity of  
23 securities I am thinking of the market value of the  
24 security listed rather than the number of shares  
25 which are listed. I do not think that is in the  
26 submission.

27 --

28 --

29 --

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1  
2 MR. STEWART: Would you know, General,  
3 what is the market value of all securities listed on  
4 your Exchange?

5 GEN. GRAHAM: We should know, but I have  
6 not the figures in my hand.

7 MR. STEARNS: We could get that very easily,  
8 Mr. Chairman.

9 COMMISSIONER PERRY: It has changed today  
10 anyway. It changes everyday.

11 THE CHAIRMAN: It must be immense. If we  
12 are talking about billions of dollars, I would like  
13 to know how many billions of dollars we are talking  
14 about. I would like to know whether the daily buying  
15 is a large proportion, or whether it is a small pro-  
16 portion; whether it turns over once a year, or ten  
17 times a year; whether we are adding to it substantially  
18 year by year, or what is the position. I suspect that  
19 we do add to it substantially year by year.

20 MR. STEARNS: Are you speaking of all  
21 equities, Mr. Chairman, or the equities available to  
22 institutions?

23 THE CHAIRMAN: I am talking of all equities  
24 listed on the Exchange; the total supply which is  
25 available for people to buy. Well, that is not quite  
26 right, because it is not all offered for sale.

27 MR. STEWART: Would there also be figures  
28 as to what we might call the available supply of these  
29 securities? For example, I think I.B.M. has  
30 recently listed on the Toronto Stock Exchange, which  
would mean that the value of all securities listed on  
that Exchange rose very materially, but the number of





1  
2 shares of I.B.M. which is available to Canadians at  
3 current market price would be a small fraction of the  
4 total of issued shares of that company.

5 MR. STEARNS: It would be very difficult  
6 for us to find out, I think, just what would be  
7 available in Canada from I.B.M.

8 GEN. GRAHAM: I do not get the point as  
9 to what will be accomplished by knowing how many  
10 billion dollars worth of shares are listed on an  
11 Exchange.

12 THE CHAIRMAN: I do not know that it will  
13 accomplish anything whatsoever, but I keep on  
14 hearing that the supply is inadequate; it is a thin  
15 market. Surely these things are capable of measure-  
16 ment, and if so, we would like to know the position.

17 MR. STEARNS: Is it not true, Mr. Chairman,  
18 that the measurement is in the experience one has every  
19 day on the market? If the price of your equities is  
20 high and your yield as a result is low, it means that  
21 there are more buyers who are willing to pay the  
22 higher price than there are equities available. In  
23 other words, the price is governed by the supply and  
24 the demand. It is the price that really is the  
25 barometer.

26 THE CHAIRMAN: I quite agree that the price  
27 is a result of the transactions and the pressures to  
28 buy and the pressures to sell. If the price were  
29 high, I would have thought that was because the  
30 demand was strong. It might be that, or it might be  
that the supply was short. If it is a low price,  
it would be one of the two converses to that.







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2 If one looks at the yield bases, they are  
3 greater than they were years ago. Does that mean a  
4 high price? Some people say they are going higher.  
5 At all events, I was wondering if there was any  
6 documentation that you could get that has a bearing  
7 on the statement that the supply is inadequate and  
8 the market is a thin one.

9 COMMISSIONER GRANT: I can tell you what is  
10 available and I think I can get it quite easily, Mr.  
11 Chairman. I refer to a survey that was made by an  
12 American magazine called "Estates and Trusts". Each  
13 year they circularize all the trust companies in  
14 Canada and ask them to complete a form. The result of  
15 that form shows the number of stocks listed on the  
16 Canadian Exchanges that appear in estates, trusts and  
17 agencies under their control.

18 There is not very much change from year to  
19 year. The stocks are all in the so-called gilt-edge  
20 security class. My recollection is that the whole  
21 list does not cover more than 40 to 45 stocks. I do  
22 not believe that more than 18 of those stocks appear  
23 in all estates, trusts and agency accounts of all  
24 trust companies.

25 THE CHAIRMAN: That would not include  
26 individuals who are not concerned with estates trust,  
27 would it?

28 COMMISSIONER GRANT: No, Mr. Chairman; only  
29 what is within the knowledge of the trust companies.  
30 But it should include not only trusts set up under  
wills but trust handled on an agency basis.

THE CHAIRMAN: And safe-keeping accounts.







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2 COMMISSIONER GRANT: That gives some  
3 indication of the thinness of the market.

4 MR. STEARNS: I would prefer to get the  
5 sense from talking to your own customers in this  
6 business as to the scarcity and what they say they  
7 want, and what is available. Time and again you find  
8 that an institution or a wealthy individual loses  
9 interest in a certain company when he wants a block  
10 of stock but it just isn't available; you cannot find  
11 it anywhere. He is not interested in buying a few  
12 hundred shares; he wants 1,000, or 2,000 -- you can  
13 multiply that, but that is an example, -- and we are  
14 getting the feeling almost every day that the merchan-  
dise isn't there for the customer.

15 THE CHAIRMAN: That is because there are  
16 not more listings on our Canadian Exchanges, from  
17 what you are saying?

18 MR. STEARNS: Not necessarily. I agree  
19 there is greater marketability from the listing, but  
20 there are some very strong and well-run markets  
21 unlisted.

22 THE CHAIRMAN: In the illustration you  
23 were speaking of we were trying to pick up a large  
24 number of shares. You would not be likely to get  
25 a large number of shares if the company had split its  
26 stock.

27 MR. STEARNS: No, not unless it results  
28 in liquidation as a result of the split. That is  
29 not considered.

30 MR. STEWART: By the same token, Mr.  
Stearns, if you had a client who wished to dispose of





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2 5,000 shares of a Canadian Industrial Blue Chip, un-  
3 less you could find, by good fortune, one purchaser  
4 you might have to pay that amount out over a period  
5 of time?

6 MR. STEARNS: That is true enough, but it  
7 just so happens today that in our present economic  
8 growth, or the factors which are predominant in our  
9 economy, it is easier to find a buyer than it is to  
10 find a seller.

11 GEN. GRAHAM: The figures are available.  
12 I have not them here but I know that Mr. Reid has  
13 them in their brief. It might save time if they could  
14 answer this question on some of the statistics which  
15 they have.

16 THE CHAIRMAN: By all means. Would you  
17 gentlemen care to step up to the table with some of  
18 your statistics and, while not introducing your sub-  
19 mission, you can give this information to General  
20 Graham.

21 GEN. GRAHAM: I know that the statistics  
22 indicate that the supply of equities, percentage-wise,  
23 falls far behind the supply of debt securing over the  
24 past decade. In other words, there is pretty clear  
25 evidence, as Peter Jaffray indicated this morning,  
26 of the emphasis being, for some reason, on debt  
27 security rather than equity financing.

28 We feel that some policy could be evolved  
29 which would encourage more equity financing and then  
30 you would have more equities available to support  
our contention that we want more shareholders. I  
understand, Mr. Chairman, that you are intimating why





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2 do we want more shareholders if there is already a  
3 scarcity of securities. I think the two have to go  
4 together.

5 THE CHAIRMAN: All I am saying is that I  
6 think if one simply increased the demand by making  
7 offerings more attractive, the result might be that  
8 the price would go up, and I do not think that  
necessarily means you would have more shareholders.

9 MR. REID: Mr. Chairman, may we comment  
10 on that, or would you rather that we did not?

11 THE CHAIRMAN: I would rather you did not  
12 introduce your own submission until we get to it. But  
13 by all means, where we are using your figures and mis-  
14 using them or misinterpreting them, please do not let  
us do that.

15 I do not wish you to produce argument until  
16 we get to your brief, because if we do that I am afraid  
17 we will get confused. Is that what you would prefer,  
18 Mr. Stewart?

19 MR. STEWART: Yes, Mr. Chairman, I think  
20 so. I think General Graham has some specific figures  
21 in mind.  
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3 COMMISSIONER PERRY: There is a table  
4 showing investment financing over a long period.

5 MR. STEWART: Gentlemen, we were  
6 considering the question of foreign investment  
7 by Canadian institutions, and the question as  
8 to how they could be encouraged to invest in  
9 Canadian equities to a greater extent.

10 Now, is there not already in our  
11 income tax legislation quite substantial incentive  
12 to those Canadian institutions to invest in  
13 Canadian as opposed to foreign equities? What  
14 I have in mind is this, that if they receive  
15 dividends from other resident Canadian companies  
16 those dividends are free from tax, whereas if  
17 they receive dividends from foreign companies  
18 they are subject to tax. You agree that is so?

19 GEN. GRAHAM: Yes.

20 MR. STEWART: Have you any other  
21 specific incentives to suggest, that --

22 GEN. GRAHAM: No, we have not any  
23 specific incentives.

24 MR. STEWART: At the top of page 4 of  
25 your submission you suggest that life insurance  
26 companies might be permitted to carry equity  
27 investments at market value on a sliding scale,  
28 as suggested by the Gordon Commission. I wonder  
29 if you could elaborate on that a bit?

30 GEN. GRAHAM: Personally I cannot  
elaborate on it. I have not got a copy of the  
report here -- the Commission's report -- I am sorry.





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3 MR. STEWART: Thank you. We can  
4 certainly do that.

5 GEN. GRAHAM: Yes.

6 MR. STEWART: Well, then, in paragraph  
7 E on page 4 you refer to the importance of the  
8 institutional investor so far as Canadian equities  
9 are concerned. Have you any estimate as to how  
10 much additional equity investment Canadian  
11 individuals should be capable of?

12 GEN. GRAHAM: I am sorry, we have not.  
13 There is no way I know that we could get that.

14 MR. STEWART: And if we do succeed  
15 in directing Canadian investment by individuals  
16 into equities and away from other types of  
17 investment, we obviously create another problem --  
18 that is, who is going to invest in the media which  
19 we have caused them to abandon?

20 GEN. GRAHAM: I quite agree.

21 MR. STEWART: So that are we in the  
22 position that we are going to have to have an  
23 absolute increase in savings by Canadian individuals?

24 GEN. GRAHAM: No; but we get back to  
25 the point that we would like to see -- less debt  
26 securities and more equity securities. We would  
27 like to see more investment in equity securities.

28 I might add, and as we have said in  
29 the brief, that in order to make more equity  
30 securities available a policy should be designed  
which would tend to discourage debt financing  
to the extent that is now being done and encourage  
equity financing. These two arguments go together.





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3 The argument is that we need more  
4 Canadian owners of Canadian business, and they  
5 must be able to buy into Canadian business; and  
6 in order to be able to buy in there there must  
7 be more equities issued by Canadian business.

8 How this is to be done, we don't know,  
9 and I don't think we could be expected to make any  
10 concrete recommendation as to how it should be done,  
11 because we feel it is so large and involved --  
12 involving government policy and so on -- that it  
13 is something that would have to be worked out by  
14 either the Commission or government departments.

15 MR. STEWART: Let me ask you this:  
16 If we are going to induce a section of the Canadian  
17 community to invest in equities -- which have  
18 not invested in such equities before, or at least  
19 to the same extent -- we may have to concentrate,  
20 perhaps, on the middle income groups, to some  
21 extent. Let us take the middle income group at  
22 least as an example. These people, if they can  
23 be induced to invest more in equities, are they going  
24 to be inclined to the equities of the blue chip type?  
25 Granted, if we can increase the supply of equities  
26 generally, we may increase the supply of blue chips,  
27 but is it not the fact in Canada that to increase  
28 the investment in blue chips also increases the  
29 investment in new businesses -- new enterprises --  
30 which necessarily are of more speculative nature.

31 GEN. GRAHAM: Now, I think our experience  
32 of investment clubs -- and they are people in the  
33 middle or over-middle income group -- indicates









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3 that there is a good mixture of types of investment  
4 that people are interested in. Taking the  
5 investment club you will see that they go into  
6 blue chips but they also go for the speculative  
7 type of stock to a certain extent. Don't you  
8 think so, Mr. Stearns?

9 MR. STEARNS: Yes.

10 GEN. GRAHAM: I think you will always  
11 find that there are some people who like the  
12 speculative nature of an investment, and you  
13 will always have those. Whether there will be  
14 enough of them, I don't know.

15 MR. STEWART: Moving on to paragraph F,  
16 page 4, I observe that your recommendations with  
17 regard to deductibility of dividends is limited  
18 to dividends paid to Canadian shareholders. Now,  
19 would that not be an extremely discriminatory  
20 position both in regards to foreign portfolio  
21 investor and also in regard to the foreign direct  
22 investor.

23 GEN. GRAHAM: I feel that it would be  
24 discriminatory in a sense, but aren't we  
25 discriminating now in our withholding tax against  
26 foreign investments, and have been for a long time?

27 MR. STEWART: Are you talking now  
28 about the withholding tax or the dividend tax  
29 credit? Perhaps you should take them one at  
30 a time. So far as the withholding tax is concerned  
we are certainly importing taxes on income from  
Canadian sources; but to some extent at any rate  
the foreign investor presumably gets credit against





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3 his own domestic tax for the Canadian withholding  
4 tax. But here, as I understand it, your suggestion  
5 in paragraph F, to take a concrete case, is that  
6 we might conceivably have a Canadian company which  
7 was prepared to distribute all its earnings in  
8 a particular year by way of dividends. If it  
9 had purely Canadian shareholders it would pay  
10 no income tax at all. If it were a wholly  
11 owned subsidiary of a foreign company it would pay  
12 corporate tax, presumably at approximately 50 per  
cent on the whole of its income.

13 GEN. GRAHAM: That is right.

14 MR. STEWART: I cannot help wondering,  
15 Gen. Graham, whether this would not be regarded  
16 with distinct alarm by foreign investors in Canada.

17 GEN. GRAHAM: I am quite sure it might  
18 be.

19 MR. STEWART: But you consider that  
20 it is a realistic proposal, having regard to that?

21 GEN. GRAHAM: Well, I think it has  
22 merit, yes.

23 MR. STEWART: Have you considered what  
24 the cost of that particular proposal would be  
25 to the Canadian revenue?

26 GEN. GRAHAM: No. It is, again,  
27 as we say at the beginning of the brief, we put  
28 these suggestions forward with great diffidence  
29 because we realize that money must be found for  
30 the process of government. These really are  
suggestions we have put up to the Commission are  
ways in which something might be done to increase





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3 Canadian ownership. Whether or not they are  
4 feasible to a large extent or a small extent  
5 or not at all is something we feel we cannot  
6 say very much about.

7 MR. STEWART: Your last suggestion on  
8 page 4 is that the present 15 per cent withholding  
9 tax on interest be eliminated or reduced in order  
10 to increase the flow of foreign capital into this  
11 type of securities rather than equities. Now,  
12 if this withholding tax were eliminated would this  
13 not mean that at least to a considerable extent  
14 the beneficiaries would be foreign governments?  
15 Is that not so? Canada would forego this tax  
16 in respect of which the foreign holder is presumably  
17 entitled to a foreign tax credit at net return,  
18 but the foreign shareholders might not be increased  
19 in the slightest. The only real beneficiary  
20 then would be the foreign government.

21 GEN. GRAHAM: That is possible. The  
22 thought behind this suggestion is that we would  
23 induce more foreign funds into debt securities  
24 rather than buying the ownership of Canadian  
25 properties.

26 If one looks at the historical develop-  
27 ment of the United States, when they were borrowing  
28 in large volume towards the end of the last century  
29 and the early start of this century, it came from  
30 Europe and the United Kingdom, and a great per-  
centage of the borrowing was in the form of  
debt securities; and a great group of debt securities









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3 were paid off with this, and the Americans own  
4 their railroads, and the other projects for which  
5 the money was borrowed.

6 Now, in Canada today this is not what  
7 is happening. Foreign capital is coming in and  
8 buying equities in the property and this can  
9 never be paid off. The foreign capital owns  
10 the Canadian business.

11 What we are trying to suggest here  
12 is that some policy might be evolved which would  
13 encourage foreign capital, which we need, to come  
14 in and put their money in debt securities which  
15 could be paid off, and that the equity securities  
16 be purchased to a greater extent by their native  
17 Canadians who would always own their own business.

18 MR. STEWART: Well, what I am really  
19 suggesting to you is that this would be operative,  
20 or would be effective, only if, by virtue of the  
21 suggestion, the total tax paid by a foreign  
22 investor was decreased.

23 MR. STEARNS: Well, the government has  
24 stated that it is their policy, or they say that  
25 it is highly desirable, that we still have foreign  
26 investment; and this is the suggestion whereby we  
27 might steer ourselves into this a little more  
28 effectively than has happened to date. We would  
29 hope it would; and we think it would contribute  
30 towards this so-called desirable objective.

MR. STEWART: Well, now, dealing with  
another aspect of withholding taxes, the 1963  
amendments, as you know, have established differen-





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3 tials, and companies which have a certain degree  
4 of Canadian ownership are to be subject to one  
5 rate of tax and those which have not are to be  
6 subject to another rate of withholding tax on  
7 dividends.

8 Do you support the principle involved  
9 in this discrimination?

10 MR. STEARNS: I think, as we say here,  
11 that -- I don't think we do. I think the principle  
12 here is that we want to create an incentive for  
13 the desirable objectives and not penalize. So  
14 far as foreigners are concerned, certainly we  
15 are very dependent on foreign capital, and we  
16 do not think it should be discouraged; and we  
17 feel that to take the 15 per cent and increase it  
18 to 20 per cent is an extra penalty at this time  
19 when at the same time coupled with reductions --

20 GEN. GRAHAM: I do not want to speak  
21 for the financial community, but I am in touch  
22 with them every day, and I would say that the great,  
23 great majority of people that I speak to are  
24 opposed to this graded withholding tax that is  
25 now proposed by the government. They feel it  
26 is going to be a withholding tax, and it should be  
27 15 per cent or less, as the government decides,  
28 and without any 25 per cent ownership and the  
29 various scales which, we understand, are going  
30 to be applied.

And, as Mr. Stearns has said, we feel  
that anything which indicates penalizing foreign





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3 capital in some way such as we now have is not  
4 good.

5 MR. STEWART: Those are all the questions  
6 I have.

7 THE CHAIRMAN: Mr. Stewart, are you  
8 going to refer to the questions that have been  
9 put to them by the staff?

10 MR. STEWART: Part 2 deals with --

11 THE CHAIRMAN: Securities transfer tax.

12 MR. STEWART: I don't think we need  
13 discuss them. I have read, of course, the  
14 answers to the questions which were put and which  
15 appear in Part 3. It seems to me that the  
16 answers are perfectly plain and that it was not  
17 necessary for me to cross-examine on them.

18 THE CHAIRMAN: I found the same thing.  
19 We have only one with respect to question 15.

20 GEN. GRAHAM: May I say, about the  
21 answers, that I do apologize for the wishy-washy  
22 answers they are.

23 THE CHAIRMAN: This matter of a tax  
24 on speculative gains is a question which has  
25 been before us a great deal, and I think it is  
26 pretty clear you are against the capital gains  
27 tax. You also deplore that under the law as  
28 it stands it is hardly distinguishable what is  
29 a capital gain and what is a profit. I think  
30 it does appear to everybody that there is no  
reason why a person who makes a large capital  
speculation in securities shouldn't pay the same









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3 tax as a person who earns his living in another  
4 way. We don't need to argue that one. But  
5 it is a very difficult question to determine.  
6 The investment dealer says the test be a test  
7 of time; you dispose of your securities within  
8 a certain time and then you become taxable, and  
9 if you hold them beyond that they are not taxable.  
10 If this were to be the law, just how would it be  
11 policed? It seems to me you are the best people  
12 to ask. How does one find out? It is easy to  
13 find out what dividends are paid because they  
14 are in defined terms. I just do not know how --

14 MR. STEARNS: In the United States  
15 that is done by the brokers themselves making  
16 available to the government the transactions;  
17 and they do make them for all their clients.

17 THE CHAIRMAN: Do they report to the  
18 government all purchases and sales of securities?

19 MR. STEARNS: To my knowledge I  
20 believe it is very similar to the T-4 forms --  
21 the dividend forms -- sent out by trust companies.

22 It is certainly not what we would  
23 call desirable.

23 THE CHAIRMAN: And obviously you would  
24 not like it.

25 MR. STEARNS: We would not like it.

26 THE CHAIRMAN: You haven't any views  
27 as to how to get at these things, or whether to  
28 leave the law alone or try to make it more --

29 GEN. GRAHAM: I did not hear the suggestion  
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3 as to time, but, in fact, that is the same as the  
4 capital gains tax in the United States where they  
5 say on time they would have no tax. In other words,  
6 they have no knowledge. They have no tax but  
7 they start with a low figure. Here the idea  
8 is starting with no tax and returns would have  
9 to be made.  
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3 THE CHAIRMAN: Your suggestion is along  
4 the line of practically every European country,  
5 including the U.K. They have all got time  
6 measurements. As far as I am concerned they are  
7 all different. None of them say they tax capital  
8 gains.

9 MR. STEARNS: No. I think it would  
10 be highly undesirable on the question of time  
11 particularly in the case of financing our natural  
12 resources industry which in the initial stages  
13 are of highly speculative nature and the person  
14 who is willing to supply money initially for  
15 this project and to see that the money goes into  
16 the Treasury for the development of our natural  
17 resources and is willing to take his chances on  
18 profit or maybe in the market. He may not be  
19 successful in making any profit. If he does make  
20 a profit, he figures he is allowed to take it.  
21 That is part of the reason why he puts the money  
22 up. I think that could very well curtail that  
23 sort of financial operation.

24 THE CHAIRMAN: Mr. Stearns, we have  
25 a law now which exempts from tax certain profits  
26 on securities which are earned by prospectors  
27 and people like that. That is done by a specific  
28 law. If we are going to exempt certain other  
29 people you have to correct the law. It must  
30 be a clear law which says: If you want to do  
this, you won't pay taxes. If you make a statement  
along that line, that is fine.







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3 Now, with respect to the right time,  
4 I don't think you can argue that it is fair to  
5 overlook the law in certain instances. I don't  
6 think you are trying to make such an argument.  
7 We have been told that there are quite a few people  
8 in this country who are living on speculation and  
9 are not paying taxes. I don't think anyone  
10 suggests in the aggregate that the amount of  
11 money is important. What is very important is  
12 that there are people paying more taxes and  
13 there are other people on the same income. That  
14 is extremely important because it is unfair.  
15 Even if the amount of money is of no consequence,  
16 I do not think that any of us wish to be aparty  
17 to condoning the exemptions to certain people for  
18 no reason. That is hard to take.

19 MR. STEARNS: I realize that it is a  
20 question of definition as to whether somebody is  
21 making money out of speculative ventures or whether  
22 it is an isolated event. It does strike me that  
23 if you eliminate this feature you are going to  
24 eliminate an awful lot of public participation  
25 in financing of the natural resources industries  
26 and the bigger companies will more and more dominate  
27 the field, which may or may not dominate the field.

28 THE CHAIRMAN: The law is a very complex  
29 one. I don't think I can explain it to you. The  
30 law says something about "Adventure in the nature  
of trade" and then you have to go miles beyond that  
to find out what it is. Are you through, Mr. Stewart?





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3 MR. STEWART: I think so, Mr. Chairman,  
4 yes.

5 COMMISSIONER PERRY: I have one question  
6 to ask. That is whether you feel that the supply  
7 of equities which it would be desirable to keep  
8 forthcoming in Canada, without the issuance by  
9 American subsidiaries of substantial quantities  
10 of equities -- in other words, could it be forth-  
11 coming from what we would think of as Canadian  
companies?

12 MR. STEARNS: I presume that you are  
13 suggesting something similar to the situation of  
14 controlled subsidiaries by a Canadian company,  
15 as we are trying to avoid wholly owned subsidiaries  
16 by the American parent. In other words, are you  
17 not suggesting that perhaps we urge that Canadian  
18 corporations which have wholly owned subsidiaries  
19 to make part of the equity in that subsidiary  
20 available as is considered desirable as the  
Americans do or the foreigners do?

21 COMMISSIONER PERRY: No. My point was  
22 simply a mathematical one. Let us wipe out  
23 subsidiaries of American companies or of foreign  
24 owned companies in this country. Do you think  
25 there is enough industry left then in Canada  
26 to provide the kind of equities for the Canadian  
market which would be desirable?

27 GEN. GRAHAM: I would hate to venture  
28 an opinion on that.

29 MR. STEARNS: All I can say is I think  
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3 it would be much more desirable to, if it can be  
4 done, get the foreign subsidiaries to give some  
5 ownership into the hands of the public of these  
6 foreign subsidiaries. That would add to it.

7 COMMISSIONER PERRY: I do not know  
8 whether Walter Gordon would agree with you. I  
9 think it is a hard problem. It is awfully hard  
10 to see what sort of incentive in Canada one could  
11 offer to encourage the American parent to have  
12 its Canadian subsidiary issue equities. I know  
13 we have been told by the executives of some  
14 American operations that they can think of nothing  
15 that would be more nonsensical than to have their  
16 Canadian subsidiaries issue equities.

17 MR. STEARNS: Yes.

18 THE CHAIRMAN: I think we have no more  
19 questions. General Graham and Mr. Stearns, thank  
20 you very much indeed for helping us as you have  
21 done to this extent. You have given us a lot  
22 to think about. We have not begun to think really  
23 about it. We have many more months of just that  
24 ahead of us.

25 GEN. GRAHAM: Will the Secretary get  
26 in touch with us if there is anything you may  
27 want in the way of figures, and so on.

28 THE CHAIRMAN: That is very kind of  
29 you. I will leave that with our staff who are  
30 trying to assemble various material for us. If  
we need additional information, thank you for  
your invitation.









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GEN. GRAHAM: Our great regret is that  
we have not been more helpful.

THE CHAIRMAN: You have been very  
helpful.





SUBMISSION OF  
THE MONTREAL STOCK EXCHANGE AND  
CANADIAN STOCK EXCHANGE

APPEARANCES: Mr. P. V. Reid, Chairman of the  
Board of Governors  
Mr. W. T. Moran, Secretary Treasurer  
Mr. O. H. Karpalini, Vice-President.

THE SECRETARY: Mr. Chairman, the next  
brief is being presented, as you know, by the  
Montreal Stock Exchange and the Canadian Stock  
Exchange. We have already met Mr. P. V. Reid,  
Chairman of the Board of Governors, Mr. W. T.  
Moran, Secretary Treasurer, together with Mr.  
O. H. Karpalini, Vice-President of the Exchange.

Mr. Chairman, I would like to enter  
this brief into the record as Exhibit No. 304.

--- EXHIBIT NO. 304: Brief of The Montreal  
and Canadian Stock  
Exchange.

THE CHAIRMAN: Thank you, Mr. Secretary.  
Good day, gentlemen. We are glad to see you and we  
are sorry we are late in getting to you. We  
have had a rather full day today, as you may  
have gathered.

You have put forward something that  
is very clear, I think. I don't know if we  
have many questions. You have given us the





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3 proposal you have worked out and the cost of it.  
4 I think generally speaking you have done a good  
5 job and it may be that there will be more questions  
6 than at the moment I contemplate.

7 MR. STEWART: Thank you, Mr. Chairman.

8 Gentlemen, one thing you suggest in  
9 your submission to the Commission is that in  
10 Canada neither institutions nor individuals appear  
11 to be greatly attracted by equity investment.  
Is that not so?

12 MR. KARPALINI: Yes.

13 MR. REID: Yes.

14 COMMISSIONER PERRY: Mr. Stewart, I  
15 have something here which I would like to get  
16 on the record, a statement which was a little  
17 mathematical calculation which appears in an  
18 article on the Journal of Finance. I think  
19 it would be appropriate to use it on the Montreal  
20 Stock Exchange brief because it appears to have  
21 been based on research financed by the Montreal  
Stock Exchange. May I mention it now?

22 MR. STEWART: Please.

23 COMMISSIONER PERRY: It is simply this:  
24 This is an article which is called "Individual  
25 Investment, Canadian Experience", and the authors  
are J. B. Poapst and W. R. Warren.

26 They have worked back from the amount  
27 of dividends declared by the Canadian individual  
28 taxpayer, to the capital amount of investments  
29 and they have come up with a figure with which I  
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3 found rather startling when I first read it.

4 As you know, the amount of dividend  
5 income is around \$3 million a year. They apply  
6 to this figure the average yields as published by  
7 Moss, Lawson and Company, the average yield for  
8 1959 being 3.7 per cent. They say "Using this  
9 yield to capitalize dividend income declared  
10 raises a value of \$8.3 billion on the shares held.  
11 By comparison the share investments of such major  
12 financial institutions as Life Insurance Companies  
13 and trustee pension funds were very small". I  
14 think the largest figure of institutional holdings  
15 we have had were mutual funds which were shown  
16 at the footnote of your own submission as being  
17 \$6 million or \$7 million.

18 I must say I am quite impressed with  
19 the figure that emerges here. It may not be  
20 absolutely valid for statistical purposes. One  
21 could argue about the rate of return. One could  
22 argue about the validity of the reporting of  
23 income for tax purposes, but most of this I think  
24 would tend to minimize the figure.

25 At any rate, suppose it is only three-  
26 quarters right and we are talking about \$6 billion  
27 of shares held by Canadian individuals. I find  
28 that is still a very impressive figure. I am  
29 beginning to think someone should say a word  
30 on behalf of the Canadian individual shareholders,  
particularly where he seems to have far exceeded  
institutions in their shareholdings.





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3 MR. REID: The only thought that occurs  
4 to me in regard to institutions and insurance  
5 companies, I believe they carry their investment  
6 at book value which may be well below the market  
7 value.

8 In regard to the individual, I have  
9 forgotten the total value of securities listed  
10 on say the Montreal Stock Exchange, and I do not  
11 know just how that \$6 or \$8 billion figure is  
12 related to the total listed Canadian investments.

13 We do not have I.B.M., but we have  
14 a number of other companies that would certainly  
15 distort our total value. I think I will look  
16 that up and see just how far. I have not the  
17 figure.

18 MR. STEWART: Of course, Mr. Perry's  
19 figures would include dividends from all companies,  
20 not simply loan companies.

21 MR. REID: No, that is right. There  
22 would be a lot of American companies.

23 MR. STEWART: It would also include a  
24 lot of private companies, family companies.

25 COMMISSIONER PERRY: The way to go  
26 beyond this large dividend figure would be to use  
27 dividend tax credit as a basis because this would  
28 be limited to dividends of Canadian companies subject  
29 to deductions.

30 MR. MORAN: I think they would include  
dividends, for example, paid by any Canadian which  
is largely held in the United States. International





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3 Nickel and a considerable number of others in the  
4 same category.

5 COMMISSIONER PERRY: I was not considering  
6 what equities they were, even if they were issued  
7 by the street railway of Bechuanaland. The fact  
8 is they are held by Canadians so there is a  
9 considerable disposition on the part of Canadians  
10 to hold equities. I just ran across the figures  
11 last night. I must say I was very considerably  
12 startled. I have made the point. I must say  
13 that you are credited with having assisted in  
the financing of the research.

14 MR. REID: Perhaps we should have done  
15 a little more ourselves.

16 MR. STEWART: Well, gentlemen, I would  
17 like to cover some of the ground which you have  
18 probably already heard covered in questions to  
19 other people today. I would like to get your  
20 views on some of these questions. I will put  
21 them as briefly as I can. Would you agree with  
22 what has been said by others here today that the  
23 price of Canadian equities are high in relation  
to stocks and high in relation to current bond yields?

24 MR. REID: I don't think I would. This  
25 is a personal answer I am giving you. Comparing  
26 our price ratios on Canadian stock in the Montreal  
27 Stock Exchange, or the Toronto Stock Exchange as  
28 compared with Dow Jones and Standard and Poors,  
29 our price earning ratios are below the U.S. similar  
30 figures at this time.









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3 Bringing it down to individual stocks,  
4 I think you find over a period of years the Canadian  
5 oil stocks sell at higher prices than seemed to  
6 be warranted in relation to U.S. oil stocks, but  
7 on the whole they will offset -- for example,  
8 Canadian papers and mines give better yields  
9 than U.S. so I do not think our stocks are out  
of line.

10 THE CHAIRMAN: You are contradicting the  
11 evidence we had this morning which I think is  
12 interesting.

13 MR. REID: I have that temerity.

14 THE CHAIRMAN: Good for you. That has  
15 been my own experience. There is not much difference  
16 -- I was looking at utilities a while ago. Really,  
17 if I could discern any difference, I think the  
18 Canadian prices were slightly higher, but very  
slightly.

19 MR. REID: Until the Quebec government  
20 acquired a bunch of them, I think we were lower.

21 MR. STEWART: I was not thinking so  
22 much of a comparison between Canadian prices  
23 and American prices as I was thinking about  
24 whether the yields on Dominion of Canada bonds  
or Province of Ontario hydros was less.

25 MR. REID: Yes, but at the same time  
26 Trans-Mountain Pipelines yield considerably more  
27 than even high grade bonds, so there is a wide  
28 discrepancy in individual stock yields. I think  
29 it is difficult to say stock yields are high, or  
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3 stock yields are low. It depends on what you are  
4 looking for. You can get low yields. You can  
5 get high yields.

6 MR. STEWART: Let us take your Montreal  
7 Stock Exchange industrial index, Mr. Reid. What  
8 price earnings multiple is the index at at the  
moment, approximately?

9 MR. REID: I have not got the figures  
10 at the moment. It is in the neighbourhood of  
11 17 times.

12 MR. STEWART: Historically is that  
13 a high price earnings ratio?

14 MR. REID: Probably historically it  
15 is higher than most occasions. In recent years  
16 it has not reached peak levels that the price  
17 earnings ratio reached at the peak of boom markets.  
I think lately that would average around 14 to 15.

18 MR. STEWART: Well now, talking of  
19 the yield basis, what would the yield be on the  
20 industrial index at the present time?

21 MR. REID: There again, I apologize  
22 for not actually having these figures in mind.  
23 My recollection is that it is between  $3\frac{1}{2}$  and 4.

24 MR. STEWART: I am not sure what type  
of bond to suggest to you as a criterion.

25 MR. REID: I do not think there is  
26 any real comparison because if you buy a low income  
27 stock you buy it because you expect to get a capital  
28 gain and I think you would have to make a study.  
29 I believe somebody has made a study of the turn  
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3 by way of a capital gain and dividends and appreciation  
4 over say a five or ten year period.

5 MR. STEWART: I am not suggesting that  
6 one buys common stock simply for dividend yield.  
7 What I was trying to find out was whether your  
8 industrial yield on the Montreal Stock Exchange  
9 industrial index at the moment is lower than it  
10 might have been say 12 years ago.  
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2 MR. MORAN: I would think, Mr. Stewart,  
3 that probably it would be a little lower.

4 MR. STEWART: There is one question I am  
5 coming to which I think you will appreciate. Was the  
6 effect of the dividend tax credit which was intro-  
7 duced in this country to increase the prices of  
8 common stock?

9 MR. REID: The effect of the dividend tax  
10 credit?

11 MR. STEWART: Yes.

12 MR. REID: I would think it would have  
13 some effect in raising prices of stock.

14 MR. MOREN: If I may interject, it is very  
15 apparent in the case of tax credits on preferred stock.  
16 In many instances you will find trust mortgages or  
17 debentures of a prime corporation selling on a higher  
18 yearly basis than the underlying preferred stock.

19 MR. REID: By the same token, presumably  
20 it is not as evident in the common stock but presumably  
21 the effect is there.

22 MR. STEWART: You have probably heard some  
23 of the discussion that have gone on today about the  
24 importance of the supply of equities in Canada.

25 Your brief suggests that the incentive to  
26 Canadians to purchase Canadian equities should be in-  
27 creased. We have been considering whether the problem  
28 is not, in large part, a supply problem as opposed to a  
29 demand problem. Would you care to give us your  
30 comments on that question?

MR. REID: Well, again, personally speaking  
I would share the view that there is no scarcity of





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2 common stock, but where we get into price earnings  
3 ratios, if Canadian stock is so scarce then United  
4 States stocks are even more scarce.

5 I think our price earnings ratios and  
6 yields are probably not greatly out of line with  
7 the European. They are just as good in many cases,  
8 and better in other countries.

9 I don't think there is any real way, with-  
10 out going through the calculation which I think the  
11 Chairman suggested -- if you have a study made of  
12 the total value of common stocks available and the  
13 total income and total assets of your country you  
14 might say that stocks were scarce or were not scarce.

15 I think it would be desirable to increase  
16 the purchasing power on individuals to buy equities,  
17 and I think there are enough equities for them to buy;  
18 and if they aren't there there are lots of new ventures  
19 and things which are going to be coming along.

20 MR. STEWART: Well, now, gentlemen, turning  
21 to your specific recommendations you say on page 4  
22 that your first stage recommendation is that the  
23 federal corporation tax excluding old age security  
24 tax, be 47 per cent on that part of gross income on  
25 which the net is retained, and 40 per cent on that part  
26 of gross income on which the net is distributed. The  
27 47 per cent figure is the figure we have at the present  
28 time.

29 MR. REID: Yes.

30 MR. STEWART: Now, you say in paragraph  
14 that by reducing the tax burden on corporate  
properties we encourage corporation to expand and







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2 grow; but if we leave the 47 per cent rate on the  
3 retained portion is there any encouragement there?

4 MR. REID: Well, there would be 7 per cent  
5 distributed to shareholders, which they presumably  
6 would be desirous to reinvest in the same or other  
7 companies.

8 MR. STEWART: I see; so that I perhaps  
9 misunderstood paragraph 14. What you mean is that  
10 if there is a larger distribution of income by way  
11 of dividends this will be reinvested in part to  
12 produce growth on the part of the corporations.

13 MR. KIRTALANI: If I may interject, I  
14 think the question of the tax burden on the corporations  
15 should be apart from the earnings and so on of the  
16 corporations -- that any kind of reduction you make  
17 in tax burden, even if it is used by the corporation  
18 to pay out for something which is useful for the  
19 corporation -- because there are many companies which  
20 like to keep a fixed dividend policy -- but if they  
21 get the benefit I take it they can utilize this benefit  
22 in cutting prices or somehow expanding; plus the fact  
23 that the extra money which comes into play in this way  
24 will come back into other corporations. So there is a  
25 significant reduction of tax burdens.

26 THE CHAIRMAN: The idea being that you wish  
27 to encourage distribution?

28 MR. KIRTALANI: Yes.

29 THE CHAIRMAN: And the reason you wish to  
30 encourage distribution is to achieve greater resources;  
is that right?

MR. KIRTALANI: Yes.







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2 COMMISSIONER WALLS: Have you finished  
3 with paragraph 13, Mr. Stewart?

4 ME. STEWART: I haven't; but I will come  
5 back to it later.

6 I have read your first sentence in para-  
7 graph 14 as meaning this, that -- let us take corpo-  
8 ration "A".

9 MR. REID: Yes.

10 MR. STEWART: It is read by your first  
11 recommendation in paragraph 13 to distribute a larger  
12 proportion of its net income, or of its income. Now,  
13 you see, what you appear to be saying in this sentence  
14 is that because it has made a larger distribution --

15 MR. KIRTALANI: The point I can make is  
16 that in actual fact in corporation "A" it might not  
17 make a larger distribution; but on the same distri-  
18 bution that it made in the previous years it will be  
19 paying that much less tax, and that much less tax  
20 would be a benefit which it would utilize. This is  
21 the same argument as in reference to the corporation  
22 tax?

23 MR. KIRTALANI: Yes.

24 MR. STEWART: I see.

25 Well, then, I think, perhaps, Mr. Walls  
26 if you have other questions on paragraph 13 it might  
27 be well for you to do so.

28 COMMISSIONER WALLS: Referring to the state-  
29 ment that you had given consideration to this \$10,000  
30 exemption for married couples' dividends, even if the  
average dividend earning were as high as 5 per cent  
which it is not, it would mean an investment of





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2 \$200,000 per family, which seems to me to be very  
3 high; and if it were the actual figure which was  
4 reported by the Exchanges it would be about \$300,000  
5 worth of investment. Do you think that your figure  
6 of \$10,000 is high in view of the amount ---

7 MR. KIRTALANI: I can tell you the back-  
8 ground of how we came to this figure. It is just that  
9 if you did the dividend tax credit as such it is  
10 a 20 per cent tax credit.

11 Now, if you go to a different income group  
12 you will find that up to a certain stage -- that is,  
13 up to and around \$10,000 earnings -- with this ex-  
14 emption the dividend tax credit works in such a way  
15 that there is, in fact, no tax on the dividend. It  
16 is only above that level of income -- it is only  
17 when you get fairly high up -- that the dividends  
18 start to yield much tax.

19 COMMISSIONER WALLS: Is that not pre-  
20 supposing the total income of a person is \$10,000  
21 from earnings rather than from what he might have  
22 invested?

23 MR. KIRTALANI: I would say that below  
24 the income of about \$10,000, in fact, that the  
25 government is getting very little tax.

26 THE CHAIRMAN: From the investment income?

27 MR. KIRTALANI: From the investment income.

28 MR. STEWART: Well, now, gentlemen, on this  
29 question of increasing this exemption, again I have  
30 asked a number of questions and I find it difficult  
to attempt to telescope them; but if we increase the  
exemption in respect of dividends how is this going





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1 to affect stock prices and yields --

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3 MR. REID: Mr. Stewart, I heard you ask  
4 this question before and I thought it over and I don't  
5 think I have any really intelligent answer.

6 Theoretically it should tend to create a  
7 demand for stock, but I personally believe that it is  
8 a very difficult thing to give an opinion on because  
9 there are so many more pertinent factors affecting the  
10 prices of stock, such as business prospects and other  
11 things that influence stock prices. You might find  
12 that you were adopting that policy and stock prices  
13 were going down.

14 THE CHAIRMAN: Apart from other consider-  
15 ations, would it not be true that if one eliminates  
16 corporation tax in the case of a company which is  
17 paying it on its earnings, its earnings would then be  
18 double. I don't think that necessarily means that  
19 the stock prices would be doubled automatically.

20 MR. REID: Taking a case where you, say,  
21 eliminate the tax, certainly it is bound to have a  
22 favourable effect on the prices.

23 THE CHAIRMAN: And all graduations in  
24 between.

25 MR. REID: Yes.

26 THE CHAIRMAN: It will have some effect.

27 MR. REID: Yes.

28 MR. STEWART: I think I am prepared to  
29 leave that at this point.

30 THE CHAIRMAN: I am not sure that we are.

MR. REID: Mr. Chairman, we are quite  
willing to stay.









1  
2 MR. KIRTALANI: Mr. Stewart, that answer  
3 which I have about the first reduction from 47 to 40  
4 is ---

5 MR. STEWART: Yes?

6 MR. KIRTALANI: If I could give an example:  
7 Taking a company, and saying it earns \$100, it pays  
8 \$50 in tax and it pays out the balance of \$50; but if  
9 you had a rate of 40 per cent on the distributed in-  
10 come the same company would then next year pay out 50  
11 per cent and it would \$40 of tax; it would pay on  
12 earnings of \$90, so it would get the benefit of that.

13 MR. STEWART: Yes; I see your point.

14 MR. KIRTALANI: This is what I wanted to  
15 clarify. It would get this benefit which it could  
16 utilize for expansion. So it would get that benefit.

17 COMMISSIONER MILNE: This is a question  
18 that was put forward by the staff, and I was interested.  
19 It is: When would the second stage recommendation go  
20 into effect?

21 MR. REID: That is a good question, because  
22 we were thinking, coming up here, that perhaps we were  
23 a little bit modest in our submission, and since we  
24 prepared it there seemed to have been a lot more  
25 substantial tax reductions advocated and introduced  
26 in the United States. The United States tax -- ours  
27 would be on the same basis. We were asking for a  
28 cut of 150 million and our request would be up to  
29 2 billion.  
30





1 The second stage might take place fairly soon.

2 THE CHAIRMAN: Our terms of reference are  
3 very restricted in this discussion. We are required  
4 to recommend measures to maintain revenues.

5 MR. REID: If we were going to cut taxes,  
6 then our idea was that the cut be redistributed over,  
7 let us say, other income tax brackets.

8 COMMISSIONER GRANT: I should have liked to  
9 see greater emphasis laid on extending the powers of  
10 investment of trustees as permitted under the Trustee  
11 Act of the various provinces. I know I am speaking  
12 of provincial legislation, but there is a great  
13 field for increasing the purchases of Canadian equities  
14 in both estate and agency accounts. Many provinces  
15 today are not permitted, however, to touch those by  
16 way of new purchases. Not only that, but by virtue  
17 of the wording of the Act they have to dispose of  
18 them if they come into their hands. It could open  
19 up quite a source for equities.

20 MR. REID: I would agree with you 100 per  
21 cent.

22 THE CHAIRMAN: But you realize that it was  
23 not within our Terms of Reference?

24 MR. REID: That is so.

25 THE CHAIRMAN: Thank you. Well, gentlemen,  
26 I thank you very much indeed. I think we have  
27 covered this adequately, and I think we understand  
28 what you have put before us.

29 I can assure you that we will continue to  
30 consider your proposals. We have a great deal to





1 consider before we come to any conclusions, but what  
2 you have put before us will be extremely helpful and  
3 will continue to aid and to guide us. Thank you  
4 very much, gentlemen.

5 MR. REID: Mr. Chairman, we appreciate the  
6 opportunity to come before you, and if we can be of  
7 any further help we will be only too pleased.

8 THE CHAIRMAN: That is very kind of you.  
9 Then we will stand over until 9:30 tomorrow morning.  
10 ---Whereupon the hearing adjourned at 4:05 p.m.

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ROYAL COMMISSION ON TAXATION

Proceedings of hearings held before  
the Royal Commission on Taxation in  
the Supreme Court of Canada Building,  
Ottawa, Ontario, commencing at 9:30  
a.m. on Tuesday, January 14th, 1964.

COMMISSION:

MR. KENNETH LeM. CARTER                      -- Chairman.  
MR. J. HARVEY PERRY,  
MR. A. EMILE BEAUVAIS,  
MR. DONALD GRANT,  
MRS. S. M. MILNE,  
MR. CHARLES E. S. WALLS.

LEGAL ADVISOR

MR. J. L. STEWART, Q.C.

RESEARCH DIRECTOR

PROF. D. G. HARTLE

SECRETARY

MR. G. L. BENNETT.

- - - - -





INDEX TO EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
305	Brief presented by The Canadian Federation of Mayors and Municipalities	7788
306	Letter received from T. R. B. Adams Executive Director of the Union of British Columbia Municipalities.	7788
307	Brief of Canadian Teachers Federation.	7829
308	Brief of the Canadian Union of Students.	7854
309	Brief from the Graduate Students Association of the University of British Columbia.	7895
310	Brief of the Canadian Life Insurance Officers Association.	7896
311	Additional memorandum from the Canadian Life Insurance Officers Association.	7899

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SUBMISSION OF  
THE CANADIAN FEDERATION OF MAYORS AND  
MUNICIPALITIES

APPEARANCES:

G. S. Mooney  
A. Turpin  
R. K. P. Dawson  
A. A. Campbell  
C. A. Vaughan  
E. Beecroft

THE CHAIRMAN: Mr. Secretary, I  
think we are all ready.

THE SECRETARY: Mr. Chairman and  
Commissioners, the first brief this morning is  
being presented by the Canadian Federation of  
Mayors and Municipalities. Mr. George S. Mooney,  
Executive Director of the Federation, together  
with a number of mayors, is here this morning to  
speak to the brief. Mr. Mooney has a few opening  
remarks and will introduce the delegation.

I would like to enter this brief  
into the record as Exhibit No. 305. Perhaps I  
might at the same time enter into the record as  
Exhibit No. 306 a letter we have received from the  
Union of British Columbia Municipalities, wherein  
Mr. T. R. B. Adams, the Executive Director, expresses  
concurrence and endorses the submission of the  
Canadian Federation of Mayors and Municipalities.







1  
2  
3 ---EXHIBIT NO. 305: Brief presented  
4 by The Canadian  
5 Federation of  
6 Mayors and  
7 Municipalities.

8 ---EXHIBIT NO. 306: Letter received  
9 from T. R. B. Adams  
10 Executive Director  
11 of the Union of  
12 British Columbia  
13 Municipalities.

14 THE CHAIRMAN: Thank you, Mr.  
15 Secretary.

16 Good morning, Mr. Mooney and  
17 gentlemen. We are glad to see you all. We have  
18 read your submission with a great deal of interest,  
19 I may say, and I think I can say that we are all  
20 very well aware of the important contribution to  
21 our welfare that is made by municipalities and  
22 by the administrators of our towns and cities.

23 We have all read this brief and  
24 there is no need to read it into the record. Before  
25 proceeding to our questions, you might like to  
26 say a few things to us, Mr. Mooney, and I would  
27 be grateful if you would introduce your associates.

28 MR. MOONEY: Mr. Commissioner and  
29 Members of the Royal Commission, there is nothing  
30 supplementary to the brief that we desire to say  
this morning. The brief speaks for itself and  
covers matters which the Federation speaking for  
the municipal governments desire to place before  
the Royal Commission.

The delegation of the Federation





1 represented here this morning is as follows:  
2  
3 To my right, Mr. Armand Turpin, Mayor of Hull;  
4 Mr. R. K. P. Dawson of the town of Mount Royal;  
5 Mr. Angus Campbell of the city of Pembroke; Mayor  
6 C. A. Vaughan of the city of Halifax; and my  
7 associate, Mr. Eric Beecroft. This is a small  
8 but representative delegation of the Federation.  
9 We are small because we feel that the questions  
10 which you may wish to ask us can best be dealt  
11 with by a small but, we think, well informed group.  
12 So we are ready to at least endeavour to reply to  
13 any questions which you may have to ask of us.

14 THE CHAIRMAN: Thank you, Mr.  
15 Mooney. Presumably your organization contains  
16 amongst its membership most of the municipalities  
17 in Canada. I note that you say that 70 per cent  
18 of Canadians now are city dwellers. Therefore  
19 you represent a great proportion of the total  
20 number of Canadians so far as city association  
21 is concerned.

22 MR. MOONEY: That is correct.

23 THE CHAIRMAN: Just how many members  
24 would you have, roughly, Mr. Mooney?

25 MR. MOONEY: The Federation member-  
26 ship is made up in two ways. There are directly  
27 affiliated members, and they account for about  
28 355; and there are 15 provincial unions of  
29 associations. The provincial unions of associations  
30 in turn embrace virtually the entire municipal  
membership of each of the provinces. So the





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3 Federation directly and indirectly represents  
4 urban municipal Canada.

5 THE CHAIRMAN: Why 15 provincial  
6 unions?

7 MR. MOONEY: There are two in  
8 some provinces.

9 THE CHAIRMAN: I was wondering  
10 whether my addition was wrong. You speak about  
11 social capital on page 7 and you quote from the  
12 Senate Report on Manpower and Employment. As  
13 I read that I was wondering what inventories  
14 there may be as to the need for additional social  
15 capital and just how priorities are developed.

16 Most municipalities now have  
17 town planning, I realize. Could one ask a  
18 municipality what are its most urgent projects  
19 in the way of reconstruction, replanning and  
20 redevelopment? Would the municipality have a  
21 list and would it be possible for them to say,  
22 "This, this and this"? There is nothing in the  
23 law that requires them to have such, I do not think,  
24 is there?

25 MR. MOONEY: No; and I would say  
26 that the priorities would vary from municipality  
27 to municipality.

28 THE CHAIRMAN: Do not stand unless  
29 you wish to, Mr. Mooney.

30 MR. MOONEY: There are really two  
mechanisms or instrumentalities which municipal  
governments have. They not only have planning







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3 departments now, but are concerned with the planning  
4 of growth requirements of their municipalities and  
5 renewal requirements. But capital budget is going  
6 to be an important feature of, at any rate, the  
7 larger city governments across the country and  
8 a great number of city governments now have five-  
9 year capital plans. For those capital projects  
10 their priorities are stated and they work systematically  
11 over a five year period to deal with those priority  
12 projects; and they vary.

12 THE CHAIRMAN: There is no  
13 compulsion as to the five-year capital budget?

14 MR. MOONEY: No. There is a bit  
15 of urging about it, but there is no compulsion.

16 THE CHAIRMAN: And I suppose they  
17 are encouraged by the Departments of Municipal  
18 Affairs of the provinces?

18 MR. MOONEY: Yes.

19 COMMISSIONER PERRY: Mr. Mooney,  
20 in any jurisdiction where the province has retained  
21 the right to accrue debenture issues, this is just  
22 done project by project, is it? There is no over-  
23 all approval of a capital program?

24 MR. MOONEY: No. It is project  
25 by project and requires, generally speaking,  
26 provincial approval of any municipal capital  
27 borrowing.

28 MR. CAMPBELL: I might mention on  
29 that point that in the province of Ontario it is  
30 mandatory by the Ontario Municipal Board to have  
a five-year capital program presented. This may





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3 not be so in other provinces, but it is required  
4 in the province of Ontario.

5 THE CHAIRMAN: How do they compel  
6 that? In order to approve a capital project they  
7 ask for such a budget, I suppose?

8 MR. CAMPBELL: They ask for such  
9 a budget and they approve it. Then they allow  
10 deviation. As you know, in any long range planning  
11 you go along for two years and then find that  
12 something else comes up and you must change it.  
13 They allow for those exigencies. But before  
14 they will approve any debenture issue or anything  
15 of that nature you must first have your capital  
16 plan approved, and as such they require you to  
17 present a capital plan each five years.

18 COMMISSIONER WALLS: In all provinces  
19 do the provincial governments guarantee the  
20 municipal debentures?

21 MR. TURPIN: No. In our province  
22 of Quebec the capital budget is not mandatory. But  
23 every by-law that requires borrowing for capital  
24 expenditure must be approved by the Provincial-  
25 Municipal Commission.

26 THE CHAIRMAN: Is the Provincial-  
27 Municipal Commission the same thing as the Ontario  
28 Municipal Board? Does it operate in the same way?

29 MR. TURPIN: Yes.

30 COMMISSIONER GRANT: Is there a  
great variety of treatment of the municipalities  
in the respective provinces, Mr. Mooney? Let us





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2  
3 start with the fact that municipalities in each  
4 province are the creatures of the province. To  
5 put it another way, is there any great degree, or  
6 are you moving towards a degree of uniformity of  
7 treatment across the country?

8 MR. MOONEY: I would say that there  
9 is generally a move towards uniformity in practice  
10 and in treatment too; but there is still considerable  
11 diversity.

12 COMMISSIONER GRANT: Are the  
13 wealthy provinces inclined to assist on a per  
14 capita basis? Do you measure it on a per  
15 capita basis? Is the assistance greater in  
16 the wealthier provinces?

17 MR. MOONEY: No, it would not be  
18 correct to say that. It varies from province  
19 to province and the method of assistance varies  
20 from province to province. There are outright  
21 per capita grants, for instance, in the province  
22 of Ontario that come to municipal governments  
23 as of right with no questions asked. They are  
24 utilized and spent for any municipal purpose.  
25 But there is no equivalent grant, for instance,  
26 in the province of Quebec or in the province of  
27 Nova Scotia, or in most of the other provinces.  
28 But there is a tendency towards that end.

29 In most of the provinces provincial  
30 grants to municipalities are conditional grants;  
that is, they will make a grant if the municipalities  
will do certain things. So there is great variation.







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3 COMMISSIONER GRANT: Education is  
4 your largest single item of expenditure, is it not?

5 MR. MOONEY: Education is our  
6 largest single item of expenditure on the total  
7 aggregate of municipal expenditures.

8 THE CHAIRMAN: It is shown on page 13  
9 as having risen from \$77 million in 1933 to \$886  
10 million in 1961.

11 COMMISSIONER WALLS: I note that  
12 on page 13 you state, following the figures:

13 "In many municipalities school  
14 costs now absorb as much as 50  
15 and 60 per cent of the total  
16 municipal tax revenue dollar."

17 But actually, with the property tax  
18 on individuals, it must absorb about 80 per cent,  
19 must it not, in many cases? I refer to the school  
20 tax.

21 MR. MOONEY: Yes, in some instances  
22 it would, in terms of the property tax.

23 COMMISSIONER WALLS: I know that my  
24 own tax is on that basis.

25 MR. MOONEY: Here again there is  
26 variation from province to province and from  
27 city to city within provinces. This is the greatest  
28 single,--we use the word "burden", on the property  
29 tax.

30 COMMISSIONER WALLS: One thing that  
strikes me in making these comparisons between  
provinces is that you have no equalization of assess-





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3 ment between one province and another. You may  
4 have it within a province. Therefore it is  
5 rather difficult to compare tax burdens or grants  
6 that should be given to the provinces, is it not?

7 MR. MOONEY: In an exact sense,  
8 but in a relative sense, no. While it is true  
9 that there is no uniform assessment nation-wide  
10 across the country, the total dollar production  
11 figure is relatively similar from province to  
12 province, city to city.

13 COMMISSIONER WALLS: What you lose  
14 in assessment, you make up on mill rate?

15 MR. MOONEY: Yes.

16 COMMISSIONER PERRY: Just as a  
17 statistical matter, the educational expense is  
18 the expense of school boards, is it? It is  
19 included here as your expenditure, and I remember  
20 some municipal politicians making statements which  
21 indicated that they did not feel they had much to  
22 do with educational expenditures.

23 MR. MOONEY: Mr. Perry, as you  
24 know, municipal governments generally throughout  
25 the country are required to impose a tax on  
26 property, which they collect. Whether they  
27 collect the amount imposed or not, they are  
28 responsible 100 per cent for the amount of the  
29 tax to be collected, and they turn that over to  
30 the school commission, which is the spending  
authority.

The municipal government raises the





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3 money 100 cents on the dollar, and whether it  
4 raises it or not, it has to turn over that 100  
5 cents. The school authority is the spending  
6 authority.

7 There is considerable feeling,  
8 sensitivity, among municipal people across the  
9 country with respect to that division, that separation  
10 of authority, and there is considerable feeling  
11 with respect to the whole role of the municipal  
12 governments in the raising of funds for school  
13 purposes, and particularly with respect to the  
14 matter of the utilization of the property tax  
15 as the source of local school revenue. You  
16 have here this morning some mayors who are in a  
17 particularly good position to discuss that matter.  
18 You have the Quebec point of view; you have the  
19 Ontario point of view. Mayor Campbell, the  
20 President of the Ontario Mayors and Reeves has  
21 just presented a submission to the Ontario govern-  
22 ment with respect to this matter, and I understand  
23 that Mayor Turpin is presenting a similar submission  
24 this coming Thursday. I think those points of view  
25 might be usefully reported to this Royal Commission.

26 COMMISSIONER WALLS: One thing that  
27 disturbs me is this. Supposing you found an  
28 alternative means of taxation for education. I  
29 presume that the municipalities are so hungry  
30 for finances for things that they consider to  
be their duty to carry out that they would quickly  
absorb a great part of the savings by expenditures on other  
municipal works?







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3 MR. CAMPBELL: Referring to education,  
4 Mr. Walls, I do not think the municipalities across  
5 the Dominion of Canada would object to this. In  
6 other words, we say that if the cost of education  
7 were placed where we, as municipal politicians  
8 feel it should be placed, then the other funds  
9 available would place us in the position where  
10 we could keep up our renewal. That is, we could  
11 give those services to the property owners which  
12 they should have, such as sewers, water, paving,  
and so on.

13 I believe the municipalities would  
14 be prepared to forego even some of the other types  
15 of grants they receive from the provinces or  
16 from the federal government.

17 Reverting back to education primarily,  
18 there is a reference in the statement pertaining  
19 to school boards and their autonomy as compared  
20 with the autonomy of local municipal councils.  
21 Most municipal councils feel that they are simply  
22 a collection agency for the school boards. They  
23 have no jurisdiction, so to speak, over the funds  
24 that the school boards take in. For instance,  
25 the federal government in the past few years, in  
26 conjunction with the provinces, has developed  
27 vocational schools. This has been a great boon  
28 to a certain class of education; but we must also  
29 remember that this has opened a new field of  
30 education. This field was opened before to those  
who were in the financial position to send their  
son to a trade school or vocational school. But





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3 those who were not in such a financial position --  
4 and there are more of them than the others -- if  
5 their son or daughter was not academically inclined,  
6 they went into the labour market. So this has  
7 developed a new phase of education.

8 These grants that are received for  
9 the building of these schools are certainly a  
10 wonderful addition to the education facilities;  
11 but once the schools are built this reverts back  
12 to the municipality. They receive some provincial  
13 grants in various provinces, within their own area,  
14 but the continuing maintenance costs, the teaching  
15 staff, the maintenance of the buildings, and so on,  
16 has again placed another burden on the municipality.

17 What has happened is that something  
18 has been created, and when you do something good,  
19 quite often some other problem develops. We  
20 realize this. I believe I speak quite plainly  
21 on this. The Federation are of the opinion that  
22 the cost of education does not properly belong  
23 with the property owner, because you can take  
24 some of the areas where -- we will call them the  
25 "have not" areas -- in Canada where they have  
26 these vocational schools. The taxpayers in that  
27 area educate these students. They receive their  
28 education and then go on somewhere else. There  
29 is not the ingress and egress of this floating,  
30 trained student population that you may think there  
is. For instance, they would leave, say, Halifax  
and go to Toronto or Montreal, whereas in some of





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3 these places they do not have these students coming  
4 back in. ~~Whose~~ So they are not receiving the  
5 benefit of the taxpayers' dollar from the property  
6 that they would normally receive in the education  
7 and maintaining of these trained personnel in their  
8 own communities.  
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3 So we feel very strongly that this cost is not a  
4 ~~prop~~ proper cost applicable to property.

5 COMMISSIONER WALLS: The only thing which  
6 is troubling me in this regard is that I know that  
7 as well as in Ontario and Quebec you have other  
8 provincial committees or provincial commissions  
9 studying this matter at the present time. I see  
10 that in some cases there have been recommendations  
11 that the provinces should pay for education by taking  
12 it out of consolidated revenue; in other provinces  
13 it has been recommended that they pay for it by  
14 sales tax; and yet in others it has been recommended  
15 that they pay for it by provincial income tax.  
16 Are your organizations uniform in what you are  
17 asking for in all provinces across Canada? Are all  
18 of the members asking for the same thing throughout  
19 the various provinces?

20 MR. CAMPBELL: I believe so.

21 MR. TURPIN: Speaking not for the province  
22 of Quebec, but regarding the brief which the union  
23 and municipalities will present to the Belanger  
24 Commission this coming Thursday, our number one  
25 recommendation to that Commission is that the real  
26 property should be left entirely to the municipality  
27 to discharge their responsibilities for the  
28 protection of the person and the property. We  
29 are recommending that we should be really rid  
30 entirely of the burden of education, and that the  
province should take that upon itself. How they  
get the revenues to do that is not, I think, our  
business. I do not think we could agree from coast





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3 to coast on how the provinces should raise the  
4 money to pay for education. Our stand is that  
5 ~~real property is no more~~ an equitable basis to  
6 collect money for paying for education. Fifty  
7 or seventy-five years ago it might have been an  
8 equitable basis, because most wealth was repre-  
9 sented by real property. Not too much money was  
10 represented in bonds or company shares, and perhaps  
11 it was equitable to collect money for education  
12 from real property. That is no more so. It would  
13 be far better for the provinces to pay for the  
14 cost of education through, perhaps, personal  
15 income tax or corporate tax on the profits, or  
16 by use of a sales tax or a blend of those three  
17 methods perhaps, which would in turn give to the  
18 school boards on a reasonable basis the ability  
19 to pay for primary and secondary education on a  
20 school per capita basis.

21 MR. MOONEY: There would be general  
22 agreement across Canada on the part of municipal  
23 authorities that the costs of education should  
24 not be made an obligation of the property owner.

25 THE CHAIRMAN: We have heard that  
26 argument before.

27 MR. MOONEY: This is a burden on the  
28 property taxation which property taxation should  
29 be relieved of.

30 THE CHAIRMAN: Yes, we have heard that  
argument. Presumably the corollary of that --  
and I think you have said this -- is that the





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3 municipalities would, in fact, give up responsibility  
4 for, and any administration of, educational  
5 matters, that the school boards would then be  
6 responsible directly to the provinces, and that  
7 moneys would be found through the municipalities  
8 or any responsibilities exercised by the municipi-  
9 palities. I suppose that is right, is it not?

10 MR. TURPIN: In our province the municipal  
11 government has no responsibility in connection with  
12 education. In our city of Hull the school boards  
13 use our assessment roll. They collect their own  
14 moneys and spend them. We have nothing whatsoever  
15 to do with how they spend that money.

16 THE CHAIRMAN: You cannot control their  
17 applications for money at all?

18 MR. TURPIN: Not at all. Whereas we  
19 have to submit our borrowing by-laws to the public  
20 before it is even submitted to the provincial-  
21 municipal commission, they are not obligated to  
22 submit their by-laws to the public.

23 MR. MOONEY: There are variations in  
24 Quebec on that point.

25 MR. DAWSON: I think the answer to Mr.  
26 Walls' specific question is that there is a complete  
27 unanimity of opinion across Canada between the  
28 municipalities on the principle that property  
29 should only bear those charges which apply to  
30 the property and services of the people, protection  
and so on. But there may be differences in  
application of those principles in the various







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3 provinces.

4 COMMISSIONER WALLS: Well, that was really  
5 my point. I know that you are all in accord  
6 with what is wrong, but it did seem to me that  
7 this matter has come up so many times within the  
8 provinces and between the provinces where it has  
9 been defeated to some extent by so many people  
10 asking for different things, or even by the same  
11 body asking for different things in different years.

12 MR. DAWSON: I think that in a country  
13 as vast as ours that is the inevitable result.  
14 It is unavoidable.

15 COMMISSIONER GRANT: I was just exploring  
16 your thinking behind the figures of revenues and  
17 expenditures on pages 12 and 13 of your brief.  
18 They seem to work out something like this. If  
19 the municipalities are relieved of the cost of  
20 education they would then have enough revenue  
21 to more than balance their budget without any  
22 provincial grants.

23 MR. TURPIN: That is right.

24 COMMISSIONER GRANT: They would have a  
25 surplus of some hundreds of millions.

26 MR. TURPIN: We would not use it all,  
27 though.

28 COMMISSIONER GRANT: I was just going  
29 to carry that a step further and say that that  
30 would leave about \$780 million to be raised for  
education, which is the equivalent of about one-  
eighth of the total revenue raised by the federal





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3 government today.

4 MR. MOONEY: That is fine! That is the  
5 whole problem.

6 MR. TURPIN: In our brief we said that  
7 if we were given real property as our source of  
8 revenue we would not ask for any other grants from  
9 the province. There would be a source of additional  
10 income which we would not use 100 per cent immediately  
11 after it was left to us. It would be gradual  
12 over a period of years. We might absorb 15 or  
13 20 per cent the first year. It is not because  
14 we would have the real property exclusively to us  
15 that we would use every cent of the money which  
16 is being raised by the school boards for education.  
17 It would be gradual.

18 THE CHAIRMAN: Would you reduce your  
19 property taxes?

20 MR. MOONEY: I think that time would tell.

21 MR. TURPIN: I do not think that we would  
22 reduce our property tax, because the rate presently  
23 is just sufficient to raise enough money. But  
24 I think it would increase gradually.

25 COMMISSIONER GRANT: If you were relieved  
26 of the cost of education it would reduce your  
27 expenditure.

28 MR. TURPIN: In our city our rate does  
29 not include the cost of education. The school  
30 boards have their own rates.

MR. CAMPBELL: It may or may not reduce  
property taxes, for the simple reason that we in





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3 the municipalities would then be in a position to  
4 do much of this great backlog of work in capital  
5 expenditures which is now being deferred due to  
6 the high cost of education on the property owner.  
7 That is our grey district, so to speak, which could  
8 be built up and renewed, such as urban renewal and  
9 things of that nature, capital expenditures which  
10 we must maintain. Then if we had a few dollars  
11 left over we would go on to projects of a municipal  
12 nature. At the present time there is a tremendous  
13 backlog across Canada of this type of work which  
14 cannot be done.

15 THE CHAIRMAN: Would you be able to take  
16 on more of the social welfare burden in the municipality?  
17 I am surprised at the figures which I see here, which  
18 indicate that in 1952 \$42 million was spent on  
19 social welfare, which is the same as 1933 which,  
20 of course, was a bad year. But it is a little  
21 more than 1946. It does not seem to me that it  
22 has grown very much over the years, nothing like  
23 in proportion to the growth in population. It  
24 is a fairly steady figure, and that is because I  
25 assume that the senior governments had been assuming  
26 more of the cost.

27 MR. MOONEY: That is the answer, and the  
28 provinces particularly.

29 MR. VAUGHAN: It varies from province to  
30 province, though. In Nova Scotia the municipalities  
must raise one-third the cost of social welfare. I  
believe in the province of Ontario it is 20 per cent.







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3 MR. TURPIN: In our city we are left with  
4 only the payment of the placement of children. Some  
5 18 per cent of that, that is all we have to pay now.

6 THE CHAIRMAN: I think you all agree that  
7 that is best administered locally.

8 MR. MOONEY: I think that the position  
9 of the municipal government is that it is quite  
10 prepared to participate in the local administrative  
11 costs of welfare, and I think it is probably desirable  
12 that it should participate. But the actual other  
13 costs involved in welfare are the responsibility of  
14 the other levels of government, provincial and  
15 federal. That is probably the position.

16 May I just say this, that there are two  
17 main arguments or contentions in this submission  
18 in so far as property tax is concerned. The first  
19 proposition is central to the whole submission,  
20 namely that the property tax is the major source  
21 of municipal revenue. It traditionally has been  
22 and still is. The cost of municipal government  
23 has soared and the nature of municipal services  
24 have multiplied, meaning more costs. Therefore,  
25 anything that puts an excessive burden on the  
26 property tax, such as the cost of education, or  
27 which siphons off property tax as a source of  
28 municipal revenue, such as other matters referred  
29 to in the submission, weakens or lessens the  
30 property tax, and therefore weakens the revenue  
resources available to municipal governments.

We have tried to argue that the federal





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3 government has had its finger in that pie, affecting  
4 both the burdening and the siphoning off of the  
5 property tax as a major source of municipal revenue.

6 THE CHAIRMAN: Thank you, Mr. Mooney.  
7 Your figures bear out what you say very clearly.  
8 The cost of education since 1951 has tripled.  
9 Property tax has come very close to tripling. You  
10 make the statement somewhere, I think at the top  
11 of page 15, that property tax "does not respond  
12 to economic influences as quickly or in the same  
13 relative magnitude as do other forms of taxes  
14 which are geared to productivity of business or  
15 income". I thought that I would look up what  
16 the resiliency was of other forms of taxes.  
17 Property taxes have gone up, according to your  
18 figure, from \$531 million to \$1,436 million between  
19 1951 and 1961. That is on page 12 of the brief.  
20 That is an increase of 150 to 160 per cent, something  
21 of that order. If I take corporation income  
22 taxes for the same years, I notice that that  
23 has gone from \$1,227 million up to \$1,311 million.  
24 That has only gone up 6.8 per cent. There has not  
25 been much gain in corporation income tax. Personal  
26 income tax has gone better; it has gone up from  
27 \$931 million to \$2,050 million, which is 160 per cent.  
28 Then the sales and excise tax has also gone up,  
29 showing an increase of 46 per cent. However,  
30 none of those figures which I have quoted have  
gone up as much as municipal taxes have gone up,  
and are quite substantially less. I suppose that  
one has to stop and ask how much the base has gone





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3 up, and how much the rates have gone up.

4 MR. DAWSON: Mr. Carter, may I respect-  
5 fully suggest that at the top of page 16 there is  
6 the statement that municipal taxation as a percentage  
7 of the gross national product, in 1929 was 4.8 per  
8 cent, and in 1962 it was 4.1 per cent, whereas  
9 taxation at all levels of government jumped from  
10 13.1 per cent in 1929 to 25 per cent in 1952.

11 The basic principle there is that it has doubled  
12 in income tax, sales tax, excise tax, other forms  
13 of taxation, whereas in actual fact as a percentage  
14 of the gross national product, municipal tax has  
15 declined from 4.8 per cent to 4.1 per cent.

16 THE CHAIRMAN: You are going back to  
17 1929, though?

18 MR. DAWSON: Yes.

19 THE CHAIRMAN: Yes, I accept the validity  
20 of that argument if you go back to 1929, but I  
21 thought the more meaningful figures were for the  
22 last ten years, and I quoted the figure for the  
23 last ten years. The economy of the country has  
24 changed a great deal if you go back to 1929 and  
25 compare it with today, but nevertheless that is  
26 true.

27 MR. MOONEY: One of the great factors  
28 in the last ten years has been the quite phenomenal  
29 new construction role which has taken place, which  
30 has put great new value on the municipal tax roll.

Also during that period there has been  
universal reassessment of the local tax roll right







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3 across the country, many of which were badly out-  
4 dated. They have been brought up to date. These  
5 have been properties which could have produced,  
6 in part, this quite interesting comparison between  
7 the greater percentage of property tax revenue  
8 compared with corporation tax revenue percentages.  
9 I think these are considerations.

10 THE CHAIRMAN: I think the best and most  
11 interesting historical figures are to guess what  
12 is likely to happen in the future. I suppose  
13 that people have made projections -- I do not  
14 know what they are -- as to what is likely to  
15 be produced by way of property taxes, income taxes,  
16 corporation taxes. It seems to me that if the  
17 increase in property taxes had been more than the  
18 other forms in the last ten years, that is likely  
19 to continue to increase more than the others. Or  
20 am I not right there?

21 MR. MOONEY: I suppose that if it is a  
22 repetition of all the factors that have conditioned  
23 the last ten years, one would expect the next  
24 ten years to repeat; but one cannot completely  
25 argue that that will be true for the next ten  
26 years.

27 MR. TURPIN: Is it not due to the fact  
28 that between 1930 and 1939, and between 1939 and  
29 1945, the municipal governments were in such a  
30 position that they could not be relieved of large  
capital expenditures, and that this has resulted  
in a lot of work which requires to be done from





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3 now on. I think statistics --

4 THE CHAIRMAN: I am not talking about that  
5 point, Mayor Turpin. I accept that there is a  
6 backlog of social capital to be spent. However,  
7 I am looking at the resources which you are going  
8 to spend, and wondering where they are best found.  
9 You are making the point that there is a stability  
10 to municipal taxation which does not provide for  
11 growth; but I am saying that it seems to me that  
12 in the sources of taxation the most resilient and  
13 the best growth which we have seen in recent years  
14 in taxation has been in municipal taxes.

15 MR. TURPIN: Not as a matter of choice,  
16 though, but I think it is a matter of necessity.  
17 It is there, but it is because we have done it  
18 in the past ten years that it is not any more  
19 available. We have increased rapidly over the  
20 last ten years, so that our rate of increase cannot  
21 be the same for the next ten years.

22 THE CHAIRMAN: Your rates have gone up,  
23 so you cannot put them up any more.

24 MR. CAMPBELL: We estimate, Mr. Chairman,  
25 that by 1970 the cost of education will be 9.6 per  
26 cent of our gross national product. If that  
27 continues at the property owners level you can  
28 well imagine what will happen to the municipal  
29 taxes.

30 THE CHAIRMAN: Has anyone decided what  
the limit is as to property taxation, and when  
it is at the point where too many people are selling





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3 their property because taxes are too high?

4 COMMISSIONER WALLS: Right now!

5 MR. CAMPBELL: Yes, I think we have  
6 reached the optimum.

7 THE CHAIRMAN: I doubt that.

8 COMMISSIONER PERRY: This is probably  
9 the way the Federation in all sincerity felt in  
10 1951. I can imagine that George Mooney can  
11 produce statements from the press to this effect.

12 MR. MOONEY: I remember a statement which  
13 was quoted by Harvey Perry, who was considered  
14 an authority, to that effect.

15 COMMISSIONER PERRY: I am not saying that  
16 there are not obligations in this field.

17 MR. TURPIN: We have been asked that  
18 question on several occasions, and my answer and  
19 the answer of many others in our level of govern-  
20 ment has been that it depends on the policies  
21 of the higher governments. If these other two  
22 governments keep on siphoning the money from the  
23 same people, the property owners and citizens of  
24 the province and of the federal government, then  
25 what is left is becoming so small that any part  
26 which we take from it is something out of proportion  
27 to the ability to pay. That is because the  
28 provinces and the federal government have taken  
29 so much of the dollar of our property owners that  
30 we find it impossible to take a few additional  
cents from it.







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2 THE CHAIRMAN: You have a pretty good  
3 claim on the property owner, I think; a claim secured  
4 on the property.

5 MR. TURPIN: Yes, the guarantee is there;  
6 but I think if we keep on increasing our taxation  
7 bases most of us will be turned out, not because it  
8 would be our fault, because people react much faster  
9 to the actions of municipal governments than to those  
10 of the provincial and federal governments. And it would  
11 not be due to our fault. The needs for expenditures are  
12 there and we have got to do something. By doing it  
13 I think we are helping the provinces and the federal  
14 government in their over-all governmental policy.

15 COMMISSIONER GRANT: Could we explore, Mr.  
16 Chairman, the comparison here between net revenues  
17 and general expenditures on pages 12 and 13. I note  
18 that in the year 1951, for instance, expenditures ex-  
19 ceeded revenue by \$103 million; in 1956 by \$106 million;  
20 in 1959 by \$348 million; and in 1961 by \$419 million.  
21 The figures are not here for 1962, but if the trend  
22 continues they will be greater in 1962 and greater in  
23 1963. Is this difference made up in borrowing?

24 MR. MOONEY: Yes.

25 COMMISSIONER GRANT: Do these figures in-  
26 clude such municipal commissions as may be charged  
27 with capital expenditures on behalf of the municipality?  
28 I refer to two instances. For instance, the Toronto  
29 Transportation Commission, are its subway expenditures  
30 included?

MR. MOONEY: Yes, I believe they are  
included, Mr. Grant. The Toronto Transportation





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2 Commission reports its finances back to the city of  
3 Toronto and I believe in the aggregate these figures  
4 are reported back for the purpose of the compilation  
5 of the D.B.S. data as part of the city of Toronto  
6 finances.

7 I would have to double-check that, but I  
8 think that is right.

9 COMMISSIONER GRANT: These are capital  
10 expenditures, and as such are quite sizeable.

11 MR. MOONEY: Yes.

12 THE CHAIRMAN: These figures are not what  
13 one generally calls deficits. They would be deficits  
14 and also capital expenditures?

15 MR. MOONEY: Yes.

16 COMMISSIONER GRANT: With that explanation,  
17 the difference in revenue and expenditures is not  
18 quite as alarming as it may otherwise be, is it?

19 MR. MOONEY: No. I think this is attri-  
20 butable to good municipal management across the  
21 country, by and large. Our municipal governments  
22 are keeping the line -- they have to; they are not  
23 allowed to do otherwise, and they do not get out of  
24 line -- in terms of revenues and expenditures.

25 THE CHAIRMAN: Shall we move on to sales  
26 tax. With regard to sales tax you come down to two  
27 pretty definite recommendations, I believe, and we  
28 have a few questions on the subject.

29 COMMISSIONER WALLS: First of all, I think  
30 it might be well to review what you have sales tax  
on at the present time, in view of recent changes.  
As I understand it, all your road-making equipment,







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2 all your fire-fighting equipment, your culverts, your  
3 diesel oil for generators, and all the materials that  
4 go into bridges, whether it happens to be laminated  
5 timber, cement, structural steel or aluminum, and  
6 goods used as parts of drainage or sewerage systems  
7 are all at the present time exempt.

8 We agree this is a matter for study by the  
9 Commission to the extent that all taxes as between  
10 governments must be reviewed at the present time;  
11 that is, exemptions between the federal and provincial  
12 governments, as well as between federal and municipal  
13 governments, and between provincial and municipal  
14 governments. But perhaps the only things that should  
15 be exempt are those functions which do not compete  
16 with private citizens who are within your own munici-  
17 pality and whose business has to do with the same type  
18 of work that you are doing.

19 For instance, we have received strong  
20 representations from the Canadian Construction  
21 Association about having to compete with municipal,  
22 tax-free equipment. There must be many functions  
23 that fall into this category. I notice in your brief  
24 that you mention recreation; you are concerned with  
25 golf courses, skating rinks, and all sorts of things.

26 Is there not a danger that when you get  
27 into that field you are competing with private  
28 citizens who have to pay sales tax?

29 MR. TURPIN: If it was for the sales tax  
30 applicable to, say, building materials, I think if  
they were exempted the contractor would submit a bill  
without the sales tax.







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2 MR. MOONEY: If you carry the argument  
3 to its logical conclusion, they would govern the  
4 country and it would be put on a private basis through-  
5 out. The federal, provincial and municipal govern-  
6 ments are instrumentalities of the people created for  
7 serving the interests and well-being of the people.  
8 They are not interested in producing goods or services  
9 for a profit. They are undertaking these various  
10 activities because they are in the interests of their  
11 citizens.

12 To impute to municipal governments that they  
13 are competing with private enterprise because they  
14 are operating skating rinks for children seems to be  
15 the height of something or other; or that they are  
16 competing with private enterprise because they have  
17 a city hall. Where do we go on this argument? The  
18 municipal governments contend that they are part of  
19 the overall and inclusive structure of government,  
20 and part of our argument with respect to the sales  
21 tax is that the purchases of the provincial govern-  
22 ments are exempt from the federal sales tax. It is  
23 true that the federal government pays sales tax on its  
24 purchases, but this is a matter of taking out of one  
25 federal pocket and putting it into another. It does  
26 not change the total net position of the federal  
27 government as a consequence.

28 But in terms of the municipal governments,  
29 you take it out of one pocket and it has gone, and  
30 the pocket it is taken out of is the property tax.  
This is a siphoning off. This is where the federal  
government imposes a tax on local citizens on the





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2 principal source of municipal revenue, the property  
3 tax, and therefore limits the productivity of that  
4 tax in so far as municipal governments are concerned.

5 COMMISSIONER WALLS: First of all,  
6 the federal government which imposes this tax charges  
7 its own departments this sales tax.

8 MR. MOONEY: Yes, I concede that. This is  
9 a book-keeping matter.

10 COMMISSIONER WALLS: I mentioned when I  
11 started my statement that we will have to review this  
12 whole matter of taxation as between governments be-  
13 cause they are also coming into competition with  
14 private industry : in so far as -- which you did  
15 not mention -- the exemption of municipal corporations  
16 from corporation tax is concerned, which is leading  
17 in many cases to the taking over of utilities and other  
18 businesses by both municipalities and the provinces.

19 This is a matter of major importance. All  
20 these taxes have to be reviewed in the relationship  
21 of one government charging another government, and  
22 this is only part of that whole story.

23 THE CHAIRMAN: I am not persuaded that one  
24 government should not tax another government. Finally  
25 the person who pays the taxes is the citizen, the  
26 individual. It gets through to the individual in  
27 different ways and in different qualities, and if a  
28 sales tax is levied against the municipalities and  
29 against the property owners, you say it dries up some  
30 of the base on which you can assess properties. I am  
not persuaded that is not the right way to levy it  
against the citizen. If it has something to do with







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2 municipal services, I think it should come through  
3 property taxes rather than through sales tax, income  
4 tax or any other way. It is a matter of allocation  
5 against the citizen. You say that it ~~drives~~ up some  
6 of your tax base, but it would seem to me there is no  
7 valid reason why one government should not tax  
8 another government.

9 MR. TURPIN: Unless the property owners  
10 are paying more than their share of the over-all  
11 governmental expenses in Canada.

12 THE CHAIRMAN: You make the point that  
13 property owners are being unfairly treated and there-  
14 fore should be relieved?

15 MR. TURPIN: If you impose the sales tax  
16 for the materials the city might be using, and the  
17 city has to go and pick them up again from the  
18 property owners, you create more inequity.

19 MR. DAWSON: I myself might be inclined  
20 to agree with the sentiments expressed by the Chair-  
21 man, because eventually it comes out of this poor  
22 fellow who is wrapped around a barrel anyway. That  
23 is true. I think the Commission should concern itself,  
24 in the event that they reach such a conclusion, with  
25 the fact that such taxes are consistently applied.  
26 This is where we feel there is an unfair distri-  
27 bution. If a provincial government under our present  
28 law is entitled to exemptions for these things, we  
29 feel that certainly the municipalities, which are  
30 creatures of the federal government, should be  
entitled to the same treatment. I think that is  
basic.







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2 THE CHAIRMAN: I think you are probably  
3 quite correct; why should one government be exempt  
4 and another government ... taxed.

5 MR. DAWSON: Yes.

6 THE CHAIRMAN: I have nothing to say about  
7 that at all. I am speaking essentially to principle,  
8 and looking at the principle certainly one ought to  
9 vary this from time to time and in different ways.  
10 But I still am not persuaded that one government  
11 should not tax another government.

12 MR. MOONEY: There is another aspect, and  
13 this is what we were talking about a few minutes ago.  
14 That is, that in this federated structure of ours as  
15 between the three levels of government, the revenue  
16 resources available to municipal governments are very  
17 restrictive and they are very rigid. Except for some  
18 minor revenues -- and we have itemized where they  
19 come from -- traditionally and so far as we can see  
20 people continue to characterize the revenue picture  
21 in this way: The property tax will be the main  
22 source of support for the revenue requirements of  
23 municipal governments. Demonstrably this is not  
24 adequate. I think this is a generalization, but I  
25 think it would be generally agreed that it is so.

26 As a consequence of its inadequacy municipal  
27 governments have had to go on bended knee to their  
28 provincial governments; they have had to go to the  
29 federal government. So both the federal government  
30 and the provincial governments have had to introduce  
measures of relief of one form or another. As a  
consequence of this requirement we have developed a





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2 rather crazy quilt pattern at the municipal level.

3 We are talking about the three levels of  
4 government including the municipal governments. I  
5 think I would indict the municipal governments --  
6 and this is really in the brief -- also when we are  
7 talking about the tax exemption failures of local  
8 responsibilities and continue to grant certain tax  
9 exemptions to certain industries.

10 If the property tax were regarded as sancro  
11 sanct purely and solely as a source of municipal  
12 revenue for municipal purposes, and was not burdened  
13 with other extra cost obligations or not siphoned  
14 off indirectly by other tax measures of other govern-  
15 ments, we would have cleaned up a messy situation;  
16 we would have rationalized, at any rate one govern-  
17 ment level of taxation. We would have produced a  
18 sound, sensible, defensible basis for supporting the  
19 financial requirements of municipal governments. We  
20 would have set a lead, and perhaps we might achieve  
21 something similar at the provincial level.

22 THE CHAIRMAN: Without indicating that I  
23 have concluded in my own mind anything whatsoever at  
24 the present time, what has happened in municipalities  
25 is that you have been caught with a tremendous increase  
26 in the cost of education, which is going on, and no-  
27 body can deny its value and purpose, and municipal  
28 sources of revenue just have not been equal to that.  
29 I can well understand the municipal governments'  
30 difficulties on that score. I do not think you need  
labour that point any further.

With regard to federal income tax you make





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2 a couple of suggestions with regard to the deduction  
3 of property taxes from the income of the individual,  
4 and also mortgage interest, I think. Am I correct?

5 MR. MOONEY: Yes.

6 THE CHAIRMAN: We have heard this a number  
7 of times, I must say, and I find it very difficult  
8 to in any way accept the analogy as between the  
9 individual and the business. Property taxes and  
10 interest are certainly fairly deducted in determining  
11 income from a business where the property is being  
12 used in the earning of the income. Nobody can argue  
13 about that. It should come off, to get at the results  
14 of the business.

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3 I find it extraordinarily difficult to see why  
4 there should be such a deduction arising at the  
5 income of an individual. Now, we do permit  
6 deductions for arising at the income of the  
7 individual for certain social purposes. I  
8 suppose you put it on those grounds. It is a  
9 good idea to encourage home ownership, and so on.  
10 I would have thought that deductions, considering  
11 the precedence that you quote here, would cause  
12 more unfairness than they would solve. If one  
13 permits such deductions, he is permitting a  
14 lower tax to the man who pays interest on his  
15 mortgage than the man who has not got a mortgage  
16 so you are permitting lower taxes to the home  
17 owner who pays property tax and mortgage interest,  
18 than would be the case for the tenant. It just  
19 does not seem to me you arrive at a very even  
20 tax basis.

21 MR. MOONEY: I will allow some of  
22 your colleagues in the profession to deal with  
23 the matter.

24 MR. TURPIN: The federal income tax  
25 policy now, as it stands, allows tax deductions  
26 to an owner who has a second dwelling under the  
27 same roof. I think the principle has already  
28 been accepted by the Federal Government.

29 THE CHAIRMAN: That is to arrive at  
30 the income of the second dwelling where it is  
rented, a perfectly fair deduction, because you  
have got to deduct your cost to get that income  
from that dwelling. That is an entirely different





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3 matter than income of the individual who owns the  
4 house originally.

5 MR. CAMPBELL: Of course, the thinking  
6 of the Federation on that point as well is a  
7 matter again of the municipalities endeavouring  
8 to obtain sufficient working capital, if you  
9 wish to call it, if the property taxes were  
10 deducted from income. This would then enable  
11 the municipalities to proportionally increase  
12 taxes to gain sufficient working capital to do  
the backlog of work which exists.

13 THE CHAIRMAN: I saw the point in  
14 your brief, although you did not state it that way.  
15 I realize that is the point.

16 MR. CAMPBELL: That is the crux.

17 MR. DAWSON: Mr. Carter, may I  
18 venture to ask this question. Do you feel our  
19 income tax system in Canada is different to that  
20 obtaining in the United States and United Kingdom  
21 which do permit the deductions, or do you feel  
they are wrong?

22 THE CHAIRMAN: I feel they are wrong,  
23 if you would like to know what I have to say about  
24 it. I was in England recently telling them that.  
25 I got very little argument. You see, it arose  
26 in England because at one time they computed income  
27 to the home owner and made him pay tax on it. If  
28 you do that you allow deduction of mortgage interest.  
29 Then they removed the income portion and did not  
30 remove the mortgage interest. Of course, I was





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3 very interested to find why. I got no very good  
4 answer to the question.

5 MR. CAMPBELL: I would like to ask  
6 the Chairman a question. What is the Commission's  
7 thinking in so far as the capital gains tax is  
8 concerned?

9 THE CHAIRMAN: That is a nice try,  
10 Mr. Campbell. Good for you.

11 COMMISSIONER PERRY: Do you want a  
12 verbal statement or do you want it in writing?

13 MR. CAMPBELL: I mean, Mr. Carter  
14 was very emphatic as far as deductions of property  
15 taxes are concerned.

16 THE CHAIRMAN: That is right. If I  
17 was emphatic it was my own thinking and not the  
18 Commission's thinking. It may change. Do not  
19 take that as final.

20 MR. TURPIN: We think, Mr. Chairman,  
21 this imposition of income tax on that portion of  
22 the municipal tax is a double taxation.

23 THE CHAIRMAN: Yes, I notice you said  
24 that.

25 MR. TURPIN: Why should property owners  
26 have to pay twice. They pay the municipal govern-  
27 ment and then on that portion of those taxes to  
28 the municipal government they have to pay taxes  
29 to the Federal government and also to the Provincial  
30 government.

THE CHAIRMAN: I don't know what  
double taxation means. I do know we have had all







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3 sorts of people talking to us about double taxation.  
4 I think we have triple taxation and quadruple  
5 taxation, all kinds of taxation. I am not sure  
6 that there is double taxation in the way you  
7 describe it. That is a legal thing.

8 MR. TURPIN: Our suggestion is if  
9 we would be left that field of taxation we would  
10 not have to go to the provinces and the Federal  
11 government for grants of all kinds. We would be  
12 on our own feet and collect the money that we spend.  
13 Now we are getting more and more money from the  
14 higher governments. I think that policy is not  
15 sound.

16 THE CHAIRMAN: Just dealing with the income  
17 tax, I think we understand your point very clearly.  
18 I can assure you we will continue to consider that  
19 matter. It is certainly not closed. We have  
20 heard argument which has been well represented  
21 to us many times. I can assure you we will  
22 continue to consider that.

23 COMMISSIONER GRANT: I was going to say,  
24 Mr. Chairman, your solicitation is on behalf of  
25 the private dwelling owner occupier because you  
26 readily take into consideration that any other  
27 form of real estate in a municipality is entitled  
28 to deduct its deductions from its revenue if it  
29 is in the commercial field ---

30 MR. CAMPBELL: They already do, yes.

MR. MOONEY: Here again our concern,  
apart from what has been said on the double taxation,





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2  
3 Mr. Chairman, is with respect to what we spoke  
4 about before and that is recognition of the sacrosanct  
5 nature of the property tax in so far as municipal  
6 government revenues are concerned and this is a  
7 siphoning off of that source of revenue.

8 THE CHAIRMAN: I see your point,  
9 Mr. Mooney. I think it is a pretty good one.

10 MR. MOONEY: It is clearly demonstrable.

11 COMMISSIONER WALLS: I believe,  
12 correct me if I am wrong, that it is only in  
13 North America that property taxes are used for  
14 education. Maybe it is land tax I am thinking of.

15 MR. MOONEY: It adds up to the same  
16 proposition.

17 THE CHAIRMAN: I gave you the  
18 technical income tax argument which perhaps  
19 standing by itself is not as important as the other  
20 side. I don't know.

21 COMMISSIONER PERRY: Would you need  
22 these concessions in the latter part of the brief  
23 if you got rid of the educational expense?

24 MR. MOONEY: I think you would still  
25 argue with that.

26 MR. CAMPBELL: We would be very happy  
27 to get rid of the educational expense.

28 THE CHAIRMAN: This is one of the most  
29 extensive briefs we have had put together.

30 MR. MOONEY: After all, surely you  
would not want to see me go in to mothballs.

COMMISSIONER GRANT: I don't think you





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2  
3 would go into mothballs. You would be enshrined.

4 THE CHAIRMAN: Is there anything else  
5 in the last section of tax exemptions? You deal  
6 with the C.N.R. and the National Harbours Board  
7 and matters of that kind where they are exempt  
8 from municipal taxation.

9 MR. MOONEY: We have referred to  
10 what we regard as somewhat of an anomaly. The  
11 actual fact that of all the Crown corporations  
12 only the Canadian National Railways and only  
13 the C.N.R. in part and the National Harbours  
14 Board have not appeared to have carried out what  
15 amounted to a directive from the Federal govern-  
16 ment to enter in negotiations with the municipal  
17 governments to agree upon a fair and equitable  
18 basis for extra payments in lieu of taxes on  
19 properties owned by them in municipalities.

20 We have cited instances in the case  
21 of the Canadian National Railways. It has to  
22 do entirely with their properties in the Atlantic  
23 provinces. Elsewhere in Canada they are making  
24 extra payments equivalent to the going rate of  
25 taxes in other cities.

26 In other provinces, for the reasons  
27 stated in the submission, which we do not think  
28 are justifiable reasons, they fall back on their  
29 own formula.

30 The National Harbours Board for reasons  
which are cited here fall back on their own formula  
and the amount of contributions paid to cities in







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3 which they have properties are just token payments.

4 THE CHAIRMAN: Well, even if we should  
5 be in agreement with you on this, I think you can  
6 take it you have our sympathy at least. I would  
7 doubt if we would be of any use to you even if  
8 we should recommend that the Federal government  
9 should make full payments in respect of this  
10 taxation of these things. I think that would  
11 be clearly outside what we have been instructed  
12 to do.

13 MR. MOONEY: You would have to make  
14 that decision. We felt it was somewhat of a  
15 strange interest to have that situation pointed  
16 out to you. We thought you might want to refer  
17 to the fact it has been drawn to your attention.

18 MR. CAMPBELL: Mr. Carter did state  
19 that he did not see any objection to governments  
20 taxing governments.

21 THE CHAIRMAN: That is right.

22 MR. VAUGHAN: If you take this premise  
23 in your objection to the exemption of major  
24 taxes on the municipality, you must follow through  
25 with the full taxation of one government by another  
26 government.

27 THE CHAIRMAN: Thank you very much,  
28 gentlemen. I don't think we have any more questions.

29 COMMISSIONER GRANT: I request, Mr.  
30 Chairman, we did not have the opportunity of hearing  
Mayor Vaughan illustrate why the Canadian National  
should pay higher taxes to the city of Halifax, because





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3 I know he is an expert on it. He has made a  
4 special study.

5 THE CHAIRMAN: I am sure he would  
6 be delighted to tell us all about that. I would  
7 suggest it would be very nice if Mr. Vaughan took  
8 Mr. Grant aside and just gave him a little education.  
9 I would bet he could tell us.

10 Thank you very much, indeed for your  
11 help because you have given us considerable help.  
12 I can assure you if I have been negative to what  
13 you have had to say, it has been to try to provoke  
14 you. I want to hear everything you have to put  
15 forward. I think we have drawn out your arguments  
16 in support of what you had to say very fully.

17 I can assure you as I have said  
18 already we will continue to consider these matters  
19 and it will be some little time before we report.  
20 Thank you very much.

21 MR. MOONEY: Mr. Chairman, on behalf  
22 of the Federation, thank you for your courtesy  
23 in hearing us and the very kind way in which we  
24 were heard.

25 THE CHAIRMAN: Glad to see you.

26 --- Short recess.  
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SUBMISSION OF

THE CANADIAN TEACHERS FEDERATION

APPEARANCES: Dr. T. B. Greenfield, Research Director.  
Mr. G. Nason, Secretary Treasurer.  
Mr. W. J. Brown, Research Assistant.

THE SECRETARY: Mr. Chairman, and  
Commissioners. The second brief this morning is  
being presented by the Canadian Teachers Federation.  
Mr. Gerald Nason, Secretary Treasurer of the Association  
is here together with Dr. T. B. Greenfield, Research  
Director, and Mr. W. J. Brown, Research Assistant.  
Mr. Nason will give a few opening remarks. I  
would like to then enter this brief into the  
record as Exhibit No. 307.

--- EXHIBIT NO. 307: Brief of Canadian  
Teachers Federation.

THE CHAIRMAN: Would you repeat the  
officers? Mr. Nason is --

THE SECRETARY: Secretary Treasurer.

THE CHAIRMAN: Yes.

THE SECRETARY: Mr. Brown is the  
Research Assistant and Dr. T. B. Greenfield, Research  
Director.

THE CHAIRMAN: Good morning, Mr. Nason  
and gentlemen. We are glad to see you and this I







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2  
3 think was a very well prepared submission which  
4 comes to the point clearly and easily. Would you  
5 care to say a few words?

6 MR. NASON: If that is in order.

7 THE CHAIRMAN: Yes.

8 MR. NASON: I would like, if it is  
9 in order, to make a couple of comments and then  
10 very quickly by way of review -- I know you have  
11 read the brief fully. I think you had one or  
12 two others before you, just to skim through the  
13 scheme of the things.

14 We are very grateful for the opportunity  
15 of appearing before the Commission. This is a  
16 very simple brief. It will come as no surprise  
17 to you that some Canadian citizens are seeking  
18 relief from income tax so we may begin by just  
19 admitting this that probably everybody would like  
20 to pay less income tax.

21 However, in our opinion and in our  
22 submission we have tried to substantiate our  
23 feelings that the teachers, while admittedly having  
24 the same personal interest as any other citizens,  
25 have over and above this a professional interest  
26 in this education, and that these are not perhaps  
27 duplicated in full by other segments of the  
28 population. This is a professional interest  
29 which exceeds not only the interest of the teacher's  
30 profession as a profession, but also the educational  
practice within the realms of which we practice our  
profession.





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3 The brief begins by noting that teachers  
4 are included among all other taxpayers who derive  
5 income from their employment and again note on page  
6 1 that concessions for those employed have been  
7 made very sparingly in the past, regardless of  
8 whatever differences may exist in this vast general  
9 category of employed.

10 We refer to two sections of the Act  
11 that seem to have a bearing on this. This is  
12 on page 1 and note that they preclude persons  
13 such as teachers who have no choice but to practice  
14 their profession in an employed situation from  
15 deducting certain expenses. As the brief goes  
16 along we try to stretch out methods by which this  
17 might be approached; the first method being to  
18 take a general attack at the situation of the  
19 employed persons unemployed -- this is really not  
20 in our sphere of competence nor indeed our primary  
21 concern.

22 Secondly, we have tried to -- this  
23 is the one we have concentrated on -- to present  
24 the argument as clearly and as objectively as we  
25 can in favour of special considerations where they  
26 may seem special for teachers. Actually we think  
27 they are not special but are rather an adjustment  
28 of a special category into a state of equalization  
29 with other similar special categories in the  
30 population.

31 The education of teachers as we try  
32 to present the argument that this is in the national  
33 interest and we take education on three points.





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3 Beginning at page 2 we have the present  
4 status of teacher qualifications, not nearly as high  
5 as we think they should be, the holding power of  
6 the schools as benefit to quality of education  
7 and the effect of education on economic growth.

8 I shall not go into these. I imagine  
9 we can cover some of these points on pages 2, 3  
10 and 4 as we continue our discussion here this  
11 morning.

12 We might move over to page 6 for a  
13 moment and I think I can summarize the conclusions  
14 we have looked at at the top of page 6 by saying  
15 that we are advancing the argument of the  
16 desirability of a university education for  
17 teachers. To us this is as simple as day following  
18 night. We are advancing the argument in case  
19 someone might miss it.

20 Moreover it is not just pre-service  
21 education that is essential but continuing education  
22 since we are a profession. You cannot stop; even  
23 if we are well prepared when we begin our teaching  
24 lives, otherwise we cannot possibly be adequately  
25 qualified and competent teachers.

26 There are really two levels by which  
27 we feel our training is justified. Teachers  
28 are professionals. As such they have a moral  
29 and professional obligation to seek continued  
30 self improvement. If perhaps you wish to accept  
a more practical plan, there is evidence that  
the recognition for higher salary is largely this







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3 type of self improvement. Therefore, investment  
4 of personal funds in courses and conferences is  
5 as essential to the teacher as to any self-  
6 employed professional.

7 At the second level we do believe  
8 it is appropriate for the Federal government to  
9 use all possible means to encourage improvement  
10 in education particularly because of the close  
11 relationship between educational quality and  
12 availability on the economic status of the country.  
13 Therefore, we believe that at this level of interest  
14 in the national welfare there is an argument for  
15 the Federal government by income tax alleviation  
16 to encourage teachers to improve themselves and  
17 thus work towards this aim.

18 We have on page 6 listed our recom-  
19 mendations and we are prepared to answer questions  
20 about these and to make further comments.

21 On page 7 we have cited, for whatever  
22 you may consider them worth, some aspects of tax  
23 treatment of teachers in other countries.

24 On page 8 in our summary I have really  
25 tried to make two basic points that there is  
26 considerable reason to argue that teachers,  
27 who can only practice their profession in an  
28 employed situation, are being discriminated against  
29 in comparison with the self-employed professional.  
30 And secondly, when teachers qualifications are  
low, the quality of instruction received, as  
revealed by the retention rates to the upper grade





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3 in the secondary schools is also low, moreover, there  
4 is a definite relationship between quality of  
5 education and economics.

6 We believe that failure to recognize  
7 the certain professional investments for income  
8 tax deduction purposes, even a conservative state-  
9 ment would mean it would fail to encourage improve-  
ment of teachers qualifications.

10 I do not want to take any more of your  
11 time. It is clear you are familiar with our brief.  
12 We are prepared to and in fact we would welcome  
13 questions. I would be delighted to discuss whatever  
14 topics you wish.

15 THE CHAIRMAN: Thank you Mr. Nason  
16 indeed. I think for the purposes of our questioning  
17 we might look at this under three headings.  
18 Certainly there are three things that I am  
19 interested in and I guess that applies to the others.  
20 The relationship between educational standards of  
21 teachers and dropout, which you state in here, the  
22 matter of education and economic growth and the  
23 third matter of your recommendations.

24 I do not think I have ever seen  
25 correlation between educational level of teachers  
26 and retention rates of studends. I was wondering  
27 to what extent this is varied. You make the point  
28 that in British Columbia the retention rate is the  
29 highest and the educational level is pretty high  
30 too. But if we go to secondary schools where there  
is a large rate of dropout, I have always thought --  
I see that the Ontario level degree holding teachers





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2  
3 is 93.9 per cent whereas the retention in Ontario  
4 does not seem to me to be very good. 34 per cent  
5 in grade 12. The retention rate in Ontario is low.  
6 Can you explain why there is no better correlation  
7 in Ontario?

8 MR. NASON: I would just like to make  
9 this point about correlation. We recognize the  
10 vast number of factors that are operating here  
11 and it may well be we regard it as coincidence  
12 rather than correlation here. But to answer  
13 your detailed question, perhaps Dr. Greenfield  
14 or Mr. Brown would be able to answer it.

15 THE CHAIRMAN: I think we can accept  
16 the general principle if we have better teachers  
17 more boys will stay in school.

18 COMMISSIONER WALLS: Basically is the  
19 problem not much along the line of representations  
20 that were made to us that in those provinces where  
21 the amount of money allotted per pupil is the  
22 lowest is where you have the lowest standard of  
23 teaching education and the greatest number of  
24 dropouts, so finances are pretty well the backbone  
25 of both statistics to some extent.

26 MR. GREENFIELD: That is correct.

27 MR. NASON: That is basic. That would  
28 be what we have discovered from the statistics  
29 available to us. This is, however, influenced  
30 by the policy of provinces or areas to attract  
well qualified teachers because increasingly they  
are not only in competition with others in their









own

/provinces but the highly qualified people indeed of  
the whole of Canada. So you get teacher migration  
coming into this.

THE CHAIRMAN: How about the question  
I put to you?





1  
2 MR. GREENFIELD: Mr. Chairman, in the  
3 matter of correlation I should say that we did not  
4 calculate that. We are not saying that there is a  
5 relation between these two variables. Obviously  
6 there are in education many factors which would come be-  
7 tween a highly qualified teacher and his ability to  
8 keep a student at school. One would be the educational  
9 policy, the value which the province places on keeping  
10 these students at school. On the other hand, it seems  
11 to me, as a logical basis, that a student would not  
12 be kept in school if teachers do not have something  
13 to say, as it were, to the student. The qualifications  
14 and knowledge of the teacher are going to have some  
15 bearing on this retentive factor.

16 MR. NASON: If I might just interrupt, Mr.  
17 Chairman, I do not think you are disputing this  
18 logical connection. I think the Chairman is after  
19 what seems to be an inconsistency in the data.

20 THE CHAIRMAN: I am getting down to details.

21 MR. NASON: If the retention rate in  
22 Ontario is low and they have a fairly high category  
23 of qualified teachers, what effect does that have on  
24 our argument?

25 THE CHAIRMAN: I am prepared to accept  
26 that principle right away, but I am wondering why  
27 Ontario does not measure up. It is very high in  
28 Ontario, which has a large proportion of university  
29 trained teachers in the secondary schools.

30 MR. GREENFIELD.: I did try to indicate  
that one of the reasons why any correlation would be  
difficult would be because of the factor of the



1  
2 educational policy of the province. What is the aim  
3 of the school system? If it is its aim to train an  
4 elite, then your aim almost by definition is to drop  
5 people out. I am not claiming that this is the  
6 position in Ontario, but in certain western provinces  
7 I think they have tried to educate "every man's child",  
8 I think is the phrase, a little more than has been  
the case in the east.

9 THE CHAIRMAN: Well, thank you. I think  
10 that answers my question. Is there anything further  
11 on that first point?

12 MR. GREENFIELD: I thought I would point  
13 out to you that British Columbia, which is one of the  
14 provinces which has aimed at educating "every man's  
15 child, has also seen fit to spread its degree teachers, of  
16 which it has many, throughout the whole education  
17 system. So that if you are querying the effort made,  
18 I would point out that in British Columbia they had  
19 started earlier with well qualified teachers, and they  
20 have spread them down through the elementary grades  
where they have not done that in Ontario.

21 THE CHAIRMAN: Quebec is excluded because  
22 no doubt the information was not available. You can-  
23 not get the same information from Quebec which you set  
out in Table I, I presume. Is that right?

24 MR. BROWN: Yes, that is correct, Mr.  
25 Chairman. D.B.S. does not collect data for Quebec.

26 COMMISSIONER GRANT: The university en-  
27 trance requirements have a great deal of bearing on  
28 this Table too, have they not? Because if you can  
29 enter university from Grade II with matriculation, you  
30







1  
2 are required to retain a higher number of students  
3 for Grade 11. But if you also enter at Grade 12 you  
4 will have a material drop off.

5 MR. GREENFIELD: I do not know the answer  
6 to that. This is something which we have not even  
7 anticipated.

8 COMMISSIONER GRANT: I am looking at the  
9 province of Nova Scotia, with which I am familiar.  
10 There we have a retention of 40 in Grade 11, but we  
11 fall off drastically in grade 12. I suppose the  
12 reason for that is their entrance requirements to our  
13 universities in Nova Scotia are matriculation in grade  
14 11. Students there do not have to stay until grade  
15 12 to get into university, but I think we would have  
16 a larger retention in grade 12.

17 THE CHAIRMAN: Is matriculation grade 11  
18 in Nova Scotia?

19 COMMISSIONER GRANT: It is both, as a  
20 matter of fact. It is junior or senior, but you are  
21 eligible for admission to university at grade 11.

22 THE CHAIRMAN: Shall we now move on to  
23 education and economic growth? I am interested in  
24 this. Studies have been made, although I was not  
25 aware of it before, I must admit. Presumably the  
26 conclusion is that in order to achieve economic growth  
27 one must have a good level of education. I wonder  
28 how far one can carry that argument. I have always  
29 been curious as to whether, if Canada had no one  
30 without a B.A. or an M.A., if you like to go that  
far, would our growth rate be greater than it is now  
if we were a nation of M.A.'s?





1  
2 MR. NASON: We do not know how far you  
3 can carry the argument, but in view of the fact that  
4 we are a long way from being a nation of M.A.'s we  
5 think that the theory would seem to have some prac-  
6 tical implications in Canada today in that a higher  
7 level of general education than we now possess could  
8 have no effect but good on our economy. The educators  
9 have been saying that for a considerable number of  
10 years, but probably have not always themselves been  
11 convinced that they were doing anything but singing  
12 the party line. It is interesting that in the last  
13 two years some reputable economists have also sub-  
stantiated this theme independently.

14 THE CHAIRMAN: I thought that this had  
15 burst upon us about four years ago and that in order  
16 to cure structural unemployment we had to have more  
17 training and a higher average level of education.  
18 I think that that has become pretty generally accepted  
19 as a fair statement, but you tell me now that the  
20 educators have been making efforts in this direction.  
21 I did not think that they had been. I have been a  
22 little critical at the profession in the past because  
23 I was not conscious of having been warned back beyond  
24 four years that if we did not do something about  
25 education we would run into unemployment or run into  
26 a low rate of economic growth.

27 MR. NASON: I cannot exactly pin-point it  
28 for you, sir, but I think that we could substantiate  
29 this argument by facts. In the course of my research  
30 into the history of our own organizations I have come  
across a number of briefs presented to the federal  
government which have put this point very clearly. I







1  
2 cannot tell you they got a wide hearing by the govern-  
3 ment, or indeed by the public, and that may be our  
4 fault.

5 THE CHAIRMAN: This is entirely a personal  
6 matter, but three or four years ago I made a speech  
7 as President of the Canadian Welfare Council in which  
8 I think I said that we had not been warned by the  
9 educators about this. If I am wrong I should like to  
10 know, and I may well be. I just was not conscious of  
being told that.

11 MR. NASON: Here again, what constitutes  
12 a warning? The actual fact is that the largest per-  
13 centage of the Canadian population still has not  
14 heard of Schultz and Dennison.

15 COMMISSIONER WALLS: I am a little concerned  
16 about the statement, made facetiously I know,  
17 about a nation of M.A.'s. What is required, I think,  
18 is an extension of education but not necessarily of  
19 classical education. I understand that in the province  
20 from which I come, as a result of a Royal Commission study,  
21 between 60 and 70 per cent of students will be geared  
22 predominantly to vocational training from grade 9 on  
rather than geared to a classical type of education.

23 THE CHAIRMAN: I think Ontario is about  
24 to embark on a similar plan.

25 COMMISSIONER WALLS: So that it is an  
26 extension of education but not necessarily an  
extension of classical education, which is required.

27 MR. NASON: It is an extension of education,  
28 I agree. You can find readings in almost every  
29 province today which indicate that at least some  
30







1  
2 section of a course is out of kilter. I think some-  
3 one said something about a policy course in Ontario,  
4 about it not being up to date on scientific develop-  
5 ment. This too would surely be an inadequacy in the  
6 educational system.

7 The revision of all these things come back  
8 to the matters we are really here to discuss. They  
9 need two kinds of revision. One is an administrative  
10 revision in the department, and even more important,  
11 an adjustment within the professional individual  
12 teacher himself, because he has to go back and keep  
13 refreshing himself. He has to keep reading. He has to  
14 be getting access to the journals which have this type  
15 of up to date information, and he has to be able to  
16 go to meetings where he can meet not only with other  
17 teachers, but in this case with biologists and scien-  
18 tists, and know what is going on.

19 COMMISSIONER WALLS: If your organization  
20 cannot manage to get the same standard of salaries  
21 for all parts of Canada, then are you not going to  
22 continue to face this problem? In other words, in  
23 certain parts of Canada there is not sufficient  
24 salary to reward people for reaching that standard of  
25 education. What have you done in regard to trying  
26 to obtain uniformity of salary inducement?

27 MR. NASON: We have tried to bring them  
28 all up.

29 COMMISSIONER WALLS: You have got the  
30 higher ones up and maybe you have to spread a little  
further.

MR. NASON: Yes. There is a disparity





1  
2 in the education profession: all across Canada, and  
3 as you began by saying the problem is fundamental.  
4 This problem cannot really be solved with any degree  
5 of efficiency or effectiveness until we get the pro-  
6 vision of adequate resources. We know that and we are  
7 embarked on some kind of campaign which will try not  
8 so much to raise salary but to raise revenues for  
9 education across the country.

10 THE CHAIRMAN: You do not serve as a trade  
11 union, do you?

12 MR. NASON: No.

13 THE CHAIRMAN: You are a professional body.

14 MR. NASON: Yes.

15 COMMISSIONER WALLS: But you are the  
16 negotiating body with the provincial government for  
17 salaries, are you not?

18 MR. NASON: The Canadian Teachers'  
19 Federation is not.

20 COMMISSIONER WALLS: But your provincial  
21 branches are.

22 MR. NASON: Only in a couple of provinces  
23 is there provincial negotiation. Usually it is  
24 negotiation with municipal representatives. This is  
25 done through collective missions under a slightly  
26 different framework, but with much the same motivation  
27 and purpose as the other professions discuss their  
28 level of remuneration.

29 THE CHAIRMAN: Coming down to the recom-  
30 mendations which begin on page 6, you put this as an  
alternative and you suggest that the teaching pro-  
fession be treated as though they were a business, and







1  
2 as such, be allowed to deduct the expenses of that  
3 business. Or, in the alternative, you suggest that  
4 they be allowed to deduct from their salaries certain  
5 expenses.

6 As you well understand, you are not the  
7 first professional group to come before us with some-  
8 thing of this kind. We have heard the same thing from  
9 doctors, dentists, and various others. And as you  
10 point out, the permission in the act for deduction is  
11 a pretty restricted one when one is a salary earner.  
12 I am not sure of the reasons for that. As you say,  
13 perhaps it is administrative, I do not know.

14 If one goes to the alternative, you list  
15 seven items which you believe should be deductible  
16 from salaries. The first one is the cost of tuition  
17 and living expenses incurred in taking part time  
18 university courses. Is it hard to define what is  
19 a fair amount for living expenses, first of all, and  
20 secondly, what is a proper university course? I  
21 assume that a university course must be such as would  
22 advance the capacity of the student, not merely some-  
23 thing for his own entertainment.

24 MR. NASON: We appreciate the difficulty  
25 which might come here from taking too broad an inter-  
26 pretation of this. You might say that all our life  
27 is education. For administrative clarity we might  
28 suggest that the deductions in recommendations 1, 2  
29 and 3 might mean only in the case of courses which are  
30 recognized for purposes of certification or definition  
of professional standing.

THE CHAIRMAN: Who is certifying and







1  
2 defining?

3 MR. NASON: The provincial governments  
4 through the departments of education are at the  
5 moment the certification bodies, and also from time  
6 to time municipal school boards through their adminis-  
7 trative bodies, again within the policy of a  
8 provincial department, make recognitions, even  
9 designation, for instance of a head teacher in a  
10 school, which may bring very modest remuneration,  
11 really more status than anything. Where there is  
12 this type of official recognition we think there  
13 should be a clear line, regarding it as different  
14 from some other courses.

15 THE CHAIRMAN: The courses could be found  
16 by reference to the provincial departments or certain  
17 boards of education. Is that right?

18 MR. NASON: I would think that the majority  
19 of these courses, almost all of them, could be found  
20 by reference to the provincial departments of education.  
21 In the very few additional cases where there might be  
22 a local consideration, I think it could be incumbent  
23 on the teacher himself to provide a statement from the  
24 board that this course had been authorized or had been  
25 recognized in some way under a statute or regulation.

26 THE CHAIRMAN: You are suggesting living  
27 expenses under those circumstances as a deduction.  
28 That is a very different thing, I think, because it  
29 would not be a fair deduction if the student was able  
30 to live in the same locality as his course and thus  
avoid duplicate living expenses because he would not  
have to move. I would have thought that it should





1  
2 only be an additional living expense because of a  
3 cost which he was undertaking.

4 MR. NASON: Yes. I do not think that  
5 that would be any problem. That would be a good  
6 clarification.

7 THE CHAIRMAN: Of course, there is the  
8 difficulty of definition,, but let us leave that  
9 aside. That is an administrative matter.

10 MR. NASON: I also believe that this  
11 is different in other fields as well.

12 THE CHAIRMAN: Yes. Now, when one is  
13 received as an exchange teacher, is he put to extra  
14 living expense? I note that you have inserted the  
15 word "extra" before "living expenses". Would that  
16 be normal? Certainly one can see that there would  
17 be travel expenses.

18 MR. NASON: I wonder whether Mr. Brown  
19 would like to speak to that?

20 MR. BROWN: Teachers usually have to main-  
21 tain a household at home when they engage in exchange  
22 teaching, and the expenses which they incur when they  
23 are in the exchange position would be an extra living  
24 expense.

25 THE CHAIRMAN: How long does a teacher  
26 go to somewhere else as an exchange teacher? It is  
27 usually for one year, is it not?

28 MR. BROWN: Yes, usually for one year.

29 THE CHAIRMAN: It is not fair to move his  
30 family for a year?

MR. BROWN: Well, this depends, I suppose,  
on where he is going and what age are his children.





1  
2 I imagine that it is difficult to move children who  
3 are in secondary school, say, to Pakistan or some  
4 place like that.

5 MR. NASON: They do sometimes take their  
6 family if they are on expenses. There is the problem  
7 to which Mr. Brown has referred of taking the family  
8 away from home and then bringing them back.

9 THE CHAIRMAN: Yes. I think it would be a  
10 little unfair to expect them to move to Pakistan just  
11 for one year.

12 Nor, away from home marking papers. That  
13 is for provincial governments, I suppose.

14 MR. NASON: Yes. These are provincial  
15 examinations. For instance, in Ontario Toronto is  
16 the marking centre, and this means that teachers have  
17 to go to Toronto to mark these papers. I say "have to  
18 go"; if they are going to mark papers they have to go  
19 to Toronto.

20 THE CHAIRMAN: They earn extra money for  
21 marking papers.

22 MR. NASON: Yes, they do. But they do not  
23 get transportation. I understand that the remuneration  
24 in Ontario, for instance, is \$25 a day. Also, I  
25 understand that they are given perhaps \$4 a day toward  
26 living expenses. Any of us who have lived away from  
27 home for a period of time, even leaving the question  
28 of transportation out of it, know, let us say, that  
29 this may or may not cover the out of pocket things,  
30 quite apart from whether or not the teacher is getting  
anything for his efforts.

Another factor here is that the departments









1  
2 actually encourage teachers to do this. I think that  
3 we would view this particular exercise in the wrong  
4 light if we were to think that the department had  
5 decided to open this opportunity to teachers who were  
6 earning more money in the summertime and the teachers  
7 were sort of pushing each other out of the way in  
8 order to mark these papers. Circulars are sent out,  
9 and we have copies of these here in our files, circu-  
10 lars which come from the departments, encouraging  
11 teachers to do this, also telling them that this is  
12 a good thing for their profession and what-not. So  
13 that it is not just the teacher's own idea that he  
14 goes dashing out to mark papers in the summertime;  
15 apparently it seems that there is an educational value  
16 in this as well.

17 THE CHAIRMAN: Do teachers, like everybody  
18 else, indulge in many conferences?

19 MR. NASON: That is a disease which I used  
20 to think was an occupational disease, but it seems to  
21 be coming more general. They do indeed. Some of  
22 these are borne by other sources partly, and some en-  
23 tirely, but there are also a good many which are not.  
24 For instance, an example would be the Ontario Education  
25 Association, which meets again at Easter, for which  
26 there is considerable pressure put on these teachers  
27 to attend. This is a very valuable conference.  
28  
29  
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1  
2 This is entirely at their own expense. This gets  
3 over into item 6, of course. This is just one example.  
4 These associations at one time were in every province;  
5 now they are in many.

6 Quite aside from these, of course, there  
7 is as much urgency for the teacher to go to pro-  
8 fessional conferences across the border or in other  
9 centres of Canada. We cited the case of a biologist  
10 in Ontario who has got to do some pretty fast step-  
11 dancing if he is going to keep up with the develop-  
ments in that science.

12 THE CHAIRMAN: I think it is pretty clear  
13 what you have in mind with regard to 7. Are there any  
14 questions?

15 COMMISSIONER WALLS: The only question I  
16 would like to ask is this. As the Chairman brought  
17 out, we have had similar requests from other pro-  
18 fessions. If there is no tax concession available,  
19 are there not other means whereby teachers who in  
20 order to increase their earning power and wish to go to  
21 university can borrow from the banks and obtain loans,  
22 much the same as today are offered by the banks to  
undergraduates?

23 MR. NASON: I could not answer your  
24 question precisely, but let us assume that there are.  
25 I do not think there are many, if there are some; but  
26 let us assume that there are. Loans still have to be  
27 repaid and you have not actually changed the teacher's  
28 capital situation, if you want to think of it that  
29 way.

30 COMMISSIONER WALLS: You are increasing his







1  
2 future capital position?

3 MR. NASON: Yes, this is true. I suppose  
4 you could take this as a general rule throughout all  
5 professions, that nobody would get any consideration  
6 for investing but they would be loaned money to do this,  
7 and if they really thought they were to get something  
8 back for it some day, some would take the chance. But  
9 I do not think that is the norm in our society.

10 COMMISSIONER MILNE: I just have one question  
11 to ask about the number of teachers: that you find who  
12 are taking advantage of refresher courses or part-time  
13 summer courses, or even going off on and getting their  
14 doctorates. Certainly following the war it was sug-  
15 gested many times in many places that education had  
16 suffered because of the great loss of persons who would  
17 have been excellent teachers. It was said that the  
18 resultant loss to education was almost not to be  
19 estimated, and the loss was felt by the children  
20 attending the schools because they were not having  
21 the benefit of the best teaching that could be obtained,  
22 because these people were not with us.

23 I am wondering to what extent now this  
24 situation exists. Certainly we have better qualified  
25 teachers in every province than was the case during  
26 the war years and immediately following. But to what  
27 extent does your Federation find that teachers are  
28 endeavouring to improve their own qualifications, as  
29 a group?

30 MR. NASON: We looked at this a couple of  
years ago, and it was very high, and I would say it is  
still very high. You cannot be confined in a class-







1  
2 room with this many active minds each day and not be  
3 prepared to defend yourself intellectually. Believe  
4 me, it is a moment of truth, and you live through it  
5 more often than is comfortable if you are not adequately  
6 prepared.

7 Even allowing for human lethargy, you are  
8 just going to have to go out and learn more.

9 There is something I would like to point  
10 here. It is that we think pre-service preparation is  
11 very important. But equally important after the person  
12 has a B.A. or M.A., if they are going to continue  
13 teaching they have to continue learning or they are not  
14 going to be able to do their job, and we are as con-  
15 cerned that the in-service education continues as we  
16 are that the pre-service education improves. We are  
17 very happy -- this is quite aside from our topic --  
18 that in the past few years some of the many bright minds  
19 have started to flow back into the profession from  
20 industry. Previously they wanted to teach and could  
21 not afford to do so. Now if they take perhaps a  
22 \$1000 loss they can afford to do so, and there are quite  
23 a few people doing this.

24 COMMISSIONER MILNE: I have heard that there  
25 is a strong indication in that direction, where these  
26 people have been in industry for as long as ten or  
27 fifteen years, possibly, with a personal loss in salary  
28 and certainly rather difficult situations within their  
29 homes, and without compensation for this economic de-  
30 duction, have taken this step.

31 COMMISSIONER PERRY: I wonder if I might  
32 just ask whether, in gathering up your foreign  
33





1  
2 see you.

3 MR. NASON: Mr. Chairman, may we thank you  
4 for receiving us. Perhaps I may add just this one  
5 point. We would not like to have it appear that we are  
6 looking for hand-out, because our profession has a  
7 history of which we are rather proud, of serving under  
8 some rather arduous circumstances. We consider that  
9 there is to an extent, perhaps unwittingly, discrimi-  
10 nation in the act and we are simply looking for an  
11 adjustment of that toward a situation of justice or  
equity for self-employed professionals.

12 THE CHAIRMAN: That is very well stated, and  
13 we note what you have said. Thank you very much.  
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Submission of the Canadian Union of Students.

APPEARANCES:

Donald Fraser

Jean Belanger

Jordan Sullivan

Claude Morin

David E. Jenkins

David H. Cooper

THE CHAIRMAN: I think we are all ready, Mr. Secretary.

THE SECRETARY: Mr. Chairman and Commissioners, the next submission this morning is being presented by the Canadian Union of Students. This is an organization formerly known as the National Federation of Canadian University Students.

Mr. David E. Jenkins, National President, is here this morning, together with a number of his colleagues. Mr. Donald Fraser, counsel for the group, will introduce the National President, who in turn has a few remarks to make and will introduce his colleagues.

I would like to enter this brief into the record as Exhibit 308.

--- EXHIBIT 308: Brief of the Canadian Union of Students.

THE CHAIRMAN: Thank you, Mr. Secretary.  
Good morning, Mr. Jenkins and gentlemen.







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2 Before we start I would like to be sure that we under-  
3 stand exactly what your organization is. How is the  
4 Canadian Union of Students organized? I see that it  
5 represents a vast number of students -- virtually all  
6 -- because the figure is 120,000 and I think you say  
7 elsewhere in your brief that you represent about  
8 140,000 students, or something of that kind. I presume  
9 that we are speaking to both undergraduate and graduate  
10 students.

11 Would you like to say a few words, Mr.  
12 Jenkins, before we start to ask questions, or Mr.  
13 Fraser?

14 MR. FRASER: Mr. Chairman, I would just like  
15 to introduce Mr. Jenkins for that very purpose. He has  
16 a little bit to say on the background and the present  
17 function of our union. Mr. Jenkins is a graduate of  
18 law of the University of Alberta and he is, as you  
19 know, National President of the Canadian Union of  
20 Students. I introduce Mr. Jenkins, Mr. Chairman.

21 THE CHAIRMAN: Thank you Mr. Fraser.

22 MR. JENKINS: Thank you, sir. I must first  
23 say that we are very honoured to have the privilege of  
24 appearing before you here today. If I may, sir, I  
25 would now introduce the delegation that we have  
26 brought before you. To my right is Mr. David Cooper,  
27 our comptroller from our Ottawa office; Mr. Fraser,  
28 who is acting as counsel for us, is technically a  
29 student at the bar admission course at the University  
30 of Toronto, so we are being very loose in our reference  
to the term "counsel". Mr. Fraser is a graduate in  
law from Queens University, 1963.





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MR. SULLIVAN: I might say, Mr. Chairman, that Mr. Fraser is on a bar admission course at Osgoode Hall, which has no connection with the University of Toronto.

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MR. JENKINS: Mr. Sullivan, to my left, is a law graduate from the University of Toronto.

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THE CHAIRMAN: I guessed that.

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I would like to thank you for your invitation to explain a little bit our organization to you. I might say that we are definitely not as well known as some of the organizations that have appeared before you, and we do welcome this opportunity. We were formed in 1926 and for all of the 38 years prior to this year we have been known -- as has been pointed out by Mr. Bennett -- as the National Federation of Canadian University Students. This was changed to the Canadian Union of Students at our National Legislative Congress this fall which was held in Edmonton.

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We have 120,000 members. You have asked, Mr. Chairman, about the graduate and undergraduate make-up. They are primarily undergraduates. We have numerous graduate students in the organization, however, but we cannot claim that we represent all the graduate students in Canada.

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I would like to say that we represent 41 different institutions across Canada. These are universities and two of the newer institutes of







1  
2 technology. We plan in the future to expand our  
3 membership to include these new institutes of techno-  
4 logy as they are formed.

5 Membership is compulsory in our organization.  
6 You automatically belong if you are a student at one  
7 of these institutions. I would like to turn briefly  
8 to our goals and purposes. No. 1 amongst our goals  
9 is that of working toward unity in Canada amongst the  
10 students of Canada, working toward some kind of national  
11 consciousness. To this end we have projects such as  
12 our national seminar. We have a national magazine  
13 called "Campus Canada" that is widely circulated. We  
14 have regional seminars, meetings where the students  
15 of Canada can meet one another face to face, parti-  
16 cularly the English and French students, to discuss  
17 their differences, discuss their similarities.

18 Secondly, under our aims and philosophies  
19 we are working for the intellectual welfare of the  
20 students of Canada. Along those lines we have been  
21 working in the biculturalism area and we have submitted  
22 a brief to the preliminary hearing of the Royal  
23 Commission on Biculturalism, and we will be making our  
24 final submission to it next fall. To this end we are  
25 holding study groups and a national seminar to prepare  
26 what we can put forward as the views of the students of  
27 Canada.

28 Along this line we are working in the area  
29 of human rights, the area of academic freedom, R.C.M.P.  
30 investigation on campuses, and in regard to the latter  
matter we have been to see the Prime Minister recently,  
as you may have read.





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2  
3 Thirdly is the material welfare of the students of  
4 Canada. This fits in to our appearance before you  
5 today. Along this line we make representations to  
6 various provincial governments and the federal govern-  
7 ment. We have discussed taxes for a number of years  
8 and this was in particular reference to what is now  
9 Clause 11-1-QB of the Income Tax Act. We have along  
10 the material welfare lines a travel department which  
11 looks after ways of finding low cost travel for  
12 students. We have railway discounts. We approached  
13 the Centennial administration for grants. As well  
14 we carry out fund raising for projects for our national  
15 program from such organizations as the Canada Council,  
16 which fits in with our united goal I have already  
17 mentioned.

18 Fourthly in our aims and philosophies,  
19 Mr. Chairman, we work to extend the privilege of  
20 education to as many Canadians as possible. Briefly  
21 we believe that education is a right and not a  
22 privilege. Sir, we believe there are many students  
23 who are qualified to attend university and who are  
24 not getting to university because of financial  
25 problems, due to a lack of financial resources on the  
26 part of their families.

27 Fifthly is our international program --  
28 very briefly -- we work against the International  
29 Student Communist Movement which is run through the  
30 International Union of Students. This is financed  
by the Soviet government directly. We work against  
that through underdeveloped countries. I think I





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2  
3 should say a word about how we are financed, how our  
4 national organization is financed. We collect 50 cents  
5 from each student across the country. This is  
6 compulsory. It is a very small amount but lets us  
7 maintain our office here and to carry out our work.

8 As well, we have extensive fund  
9 raising projects. In this way we have an annual  
10 budget of over \$100,000 that we spend strictly on our  
11 projects or towards the united goal.

12 Our legislative process may be of some  
13 interest to you here today because it relates to the  
14 formulation of the ideas found in our brief. We have  
15 student councils located on all 41 campuses across  
16 the country. These are democratically elected and  
17 they work primarily on local problems. However,  
18 they take their suggestions as to national action to  
19 regional conferences which are held in the west, in  
20 Ontario, Quebec and in the Maritimes.

21 From the regional level, we move to the  
22 national level. Once a year we have our national  
23 congress which consists of the 150 student leaders in  
24 Canada. We meet for a week to thrash out what our  
25 policy will be in the coming year and it is through  
26 this process that we have obtained the ideas we are  
27 bringing forward today.

28 We call for suggestions from all 41 of  
29 the student councils and the idea of submitting a  
30 brief to you has been approved by our national  
legislative assembly.





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3 Finally we have, as I have said, our  
4 head office here in Ottawa and we have a staff of  
5 10 people here. We have our travel department  
6 located in Montreal. It is a two man department.  
7 I think I will close and turn the floor over to  
8 Mr. Fraser. If you wish I will be glad to answer  
9 questions from you as to the general nature of our  
10 organization before we move on to the brief itself.  
11 Thank you.

12 THE CHAIRMAN: Thank you, Mr. Jenkins.  
13 This to me, of course, is a very interesting statement.  
14 I had very little idea of the national activities of  
15 students having graduated one year before you  
16 started. There was nothing like this in my time.  
17 This is an immense organization and the aims certainly  
18 seem to me to be most worth while. I think we are all  
19 aware that students are an element of force in many  
20 countries, not just burning down buildings, I am glad  
21 to say. I am glad to hear what you are doing.

22 One thing you did not explain very  
23 clearly or if you did I missed it is that where do  
24 the officers and committees of your national  
25 organization come from? You have got 41 locals,  
26 if I may call them that. The student council of  
27 the different campuses, I suppose, appoint somebody  
28 for the national body.

29 MR. JENKINS: The mechanics are  
30 simple that the leader on the campus, the student  
council president is automatically a representative  
of that university to the national organization. We







1  
2 work only through the top administrative bodies on  
3 the campus at the student level so we have the  
4 opinions of the student.

5 THE CHAIRMAN: I must say that seems  
6 logical and sensible. I am not sure that the Income  
7 Tax Act can do very much to assist what you have in  
8 mind but certainly we are interested to see whether  
9 or not it can.

10 MR. JENKINS: Sir, would it be proper  
11 if I can turn the floor over to Mr. Fraser.

12 THE CHAIRMAN: By all means. The  
13 way we conduct these hearings is that usually people  
14 sit down but anyone who wishes to stand is free to do  
15 so. It is usually our legal friends who stand and  
16 as you fellows are practising, by all means do so.  
It may be more comfortable to sit.

17 MR. FRASER: Mr. Chairman, may I first  
18 say this morning we intend to simply take the  
19 quiet approach to the problem and leave the militant  
approach to some of our friends overseas.

20 I would like to precisely take some  
21 of the philosophy behind this brief. Many people may  
22 ask why are you asking for more exemptions? Why  
23 are you asking for greater relief in different  
24 areas? Briefly we are concerned that students are  
25 a major natural resource of the country in the same  
26 way that mines of the country are natural resources  
27 or some other aspects of the country are natural  
28 resources. We believe this is one resource that  
29 cannot be properly used without education. We realize  
30





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2  
3 that there is a rare instance that a man can rise  
4 above not having the opportunity to have a full  
5 education and may be very useful to his country but  
6 we think in general that before the youth of the  
7 country can be utilized, they must be educated.

8 Now, we believe that education should  
9 be based on ability regardless of economic need and  
10 in line with this we approach at least one of the  
11 recommendations from the scholarship point of view  
12 rather than the bursary point of view. We want  
13 this on the basis of ability. We just don't want  
14 handouts to anyone who wants a university education.

15 In approaching this brief, we have  
16 tried to stick to three main principles in formulating  
17 our recommendations. First we have tried to make our  
18 proposals as general and all encompassing as possible.  
19 We have had hosts of small suggestions to do this  
20 and do that. Wherever we could, we have implemented  
21 these into general broad approaches.

22 The second thing is we have considered  
23 at every instance how to make proposals that will  
24 be administratively feasible. We have tried not  
25 to suggest things which just cannot be implemented  
26 just because it is something we might have liked.

27 The third point is that we have attempted  
28 to make the level of our recommendations to the  
29 level of the deductions that we ask for naturally  
30 flow from the statistics that we have available.  
We hope the Commission will agree in the subsequent  
discussions that this is so.





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3 As far as the brief itself is concerned  
4 there are two parts. There is a part generally  
5 dealing with the structures and the part dealing with  
6 specific recommendations.

7 I think if it is agreeable to the  
8 Commission before we go on to questions dealing with  
9 our specific recommendations we would like to have  
10 Mr. John Belanger make a brief statement regarding the  
11 structures part of our brief.

12 THE CHAIRMAN: Well now, I want to be  
13 sure what you are going to go into now is within the  
14 terms of reference. There is little purpose to us  
15 discussing provinces sharing the cost of education.  
16 There is great purpose to us discussing sections of  
17 the Income Tax Act and so on. We are a federal  
18 commission. You must remember that and can only report  
19 with respect to federal taxation.

20 MR. FRASER: Yes, Mr. Chairman. We are  
21 well aware of the terms of reference. We have kept  
22 our statement on the structures part of the brief as  
23 short as possible.

24 MR. BELANGER: (In French). Mr. President,  
25 I would like now to translate what I have said and  
26 elaborate a little bit more. You know that the  
27 second part of our submission deals with problems of  
28 a constitutional nature. Why? This series is a  
29 rebuttal to other briefs which have been presented to  
30 you and ask the federal government to intervene in  
a more pronounced manner in education with the aim of  
diminishing taxes on the land owner. In this respect







1  
2 I would like to refer to a brief which was submitted  
3 to you on the 3rd of August, 1963 by Mr. Kenneth C.  
4 Patterson of Regina and by Mr. C.A. Scanlan of  
5 Vancouver on the 13th of August, 1963.

6 It becomes necessary to place the  
7 problem of education in its true context. It is a  
8 problem which overrides the terms of reference of this  
9 Commission because its solution demands new re-allocation  
10 of the fiscal resources between the federal and  
11 provincial governments. Why is such a solution  
12 necessary? Because even if the absolute power of  
13 spending seems to justify interventions of the federal  
14 government there remains the fact that education is  
15 by Article 93 of the British North America Act the  
16 sole and exclusive responsibility of the provincial  
17 government but the power is illusory of the authority  
18 having this power does not have the means of implementing  
19 the power.

20 The present educational situation in  
21 Canada, that is the increasing school and university  
22 population, makes this problem acute with every  
23 passing year and multiplies the needs of education.  
24 Because the provinces now and even more so in the  
25 future, will not be able to fulfill in an adequate  
26 fashion their function as long as the federal govern-  
27 ment maintains this control over the main source of  
28 revenue, as long as this situation prevails more  
29 sub-ventions will be needed by the federal government  
30 in areas of provincial jurisdiction. Interventions  
by the federal government do not form part of a unified





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2 plan but merely provide a solution to a specific  
3 problem without relation to the remainder of the  
4 education situation.

5 What is the conclusion to be derived  
6 from all of this? Does it mean that the federal  
7 government must withdraw from all its educational  
8 activities and that education must suffer? We suggest  
9 that the role of the federal government is to enable  
10 the provinces to fulfill their responsibility in the  
11 field of education and this will be achieved by a  
12 new re-distribution of fiscal resources. Thank you.

13 THE CHAIRMAN: Thank you very much,  
14 Mr. Belanger.

15 COMMISSIONER GRANT: I would like to  
16 enter the discussion on this very interesting subject  
17 of jurisdiction and perhaps I should address my remarks  
18 to Mr. Fraser, should I?

19 MR. FRASER: If you wish.

20 COMMISSIONER GRANT: As I understand  
21 your submission, you do not question the federal  
22 government's right to impose taxation in any form as  
23 long as -- to use the words of one of the cases  
24 which you cited "as long as the pith and substance"  
25 or as long as the spearhead of the transaction is  
26 within the jurisdiction of the federal government  
27 or parliament, then there is no question of infringement  
28 upon provincial rights. If however, that legislation  
29 begins to lose its significance, or lose its stand  
30 as federal legislation and begins to encroach upon  
the provincial field, then the question becomes:





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3 has it encroached to the extent that it is a violation  
4 of provincial rights?" One of those provincial  
5 rights is education. Now, as I understand your brief,  
6 you have no objection to any additional grants being  
7 made by the federal government to the province but  
8 what you do prefer above all else is that the provinces  
9 re-enter the exclusive field of education; that they  
10 not only are responsible for the administration of  
11 education but that they are responsible and have the  
12 means of raising the revenues required to carry out  
13 their educational requirements. Now, would that be a  
14 correct summation of your submission in Part 2?  
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3 MR. FRASER: Yes, Mr. Chairman, we  
4 agree that this appears to be a correct summary,  
5 with one additional comment that I should like to  
6 ask Mr. Belanger to make.

7 MR. BELANGER: Strictly speaking, grants  
8 from the Federal government are valid, but it  
9 becomes a question whether those grants are given  
10 according to the spirit of the Constitution.

11 COMMISSIONER GRANT: I accept that  
12 qualification. I would like to pursue this a  
13 little further, Mr. Fraser, by asking you whether  
14 you have gone so far in your brief as to suggest  
15 what fields of taxation the Federal government should  
16 withdraw from, and what fields the provinces  
17 should re-enter in order to raise the money for  
18 educational purposes.

19 MR. BELANGER: This is not a matter  
20 within our technical competence, which we do not  
21 have in such a field. We feel that that is a  
22 matter for the two levels of government to decide  
23 for themselves, by a conference if possible.

24 THE CHAIRMAN: You have made recommendations  
25 with regard to the Income Tax Act, Mr. Fraser, and  
26 they are set forth as A, B, C, and so on. Supposing  
27 we take them one by one.

28 The first one is a recommendation that  
29 the Act:

30 "Provide an exemption of the first  
\$3,000 of earned income for students  
who now qualify for the tuition fee  
deduction contained in Section 11 (1)(qb)."





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3 It seems to me that this might not be  
4 a very useful provision in the Act, because I was  
5 curious as to what students would have sufficient  
6 income to achieve an advantage from this. Are  
7 there many students who have \$3,000 or more income?

8 MR. FRASER: No, Mr. Chairman. As  
9 you have suggested, there certainly are not that  
10 many students who have that kind of income. I  
11 think the tables which we have quoted in our  
12 argument will carry this out.

13 The reason that we ask for an exemption  
14 of the first \$3,000 is that within this area we  
15 feel that we do not want to protect the average  
16 student, but we feel that it would be just to  
17 protect any student who is capable of earning  
18 approximately what his expenses might amount to.  
19 For example, we feel that the expenses of a student  
20 often approach \$3,000, and we realize that if you  
21 earn this much in the summer, or have other means  
22 during winter of earning it, that when they do  
23 we do not feel they should be penalized, because  
24 all of this money will go toward their education.  
25 It provides for a relief which I think would be a  
26 just relief.

27 COMMISSIONER WALLS: Might I just have  
28 something clarified because I may have misunderstood  
29 your brief. Is this \$3,000, which you wish, over  
30 and above the tuition fee exemption under Section 11  
(1) (qb)? Is it over and above that?

MR. FRASER: It would be if the tuition





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3 fee deduction is applied to students; but further  
4 on in the brief we are saying that the base for  
5 which the tuition fee deduction may be allowed be  
6 spread out a bit. This means that there will be  
7 the occasional case where the student will earn  
8 an amount, say, of \$3,000, hopefully get the  
9 deduction and not use the tuition fee deduction.  
10 It may go to somebody else. That is embodied  
11 in the proposal C of our recommendations. This  
12 would be a rare case.

13 THE CHAIRMAN: Does it occur to you,  
14 Mr. Fraser, that the main beneficiaries, I think,  
15 under such a provision would be those students,  
16 the very few students, who have a large income?  
17 The larger the income the more the tax abatement  
18 will be. Naturally the top rate of tax is affected  
19 and this brings it down. I would have thought that  
20 it might not have been socially desirable to grant  
21 larger tax benefits to those few students who happen  
22 to have substantial incomes.

23 MR. FRASER: Yes, Mr. Chairman. We  
24 think that anything above \$3,000 is a substantial  
25 income for a student, but we feel that up to this  
26 level all of this income would go to living expenses  
27 and education. Therefore we feel that it is up  
28 to that level minimal for the student. Above \$3,000  
29 he will begin to have surplus money to buy cars  
30 and various things like that, and we do not think  
that people should then be protected. But we  
do believe that our statistics show that a deduction  
of \$3,000 can be equated to the first \$3,000 which will









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3 be spent on expenses if it were available. I  
4 think Mr. Jenkins might have something to add to  
5 this.

6 MR. JENKINS: If I may add just a  
7 small point, Mr. Chairman, we have been asked by  
8 the graduate students, those in various post  
9 graduate courses across the country, to see whether  
10 we can include something in this brief which would  
11 benefit them. They base their argument on the  
12 fact that we are losing many of our students in  
13 graduate studies to the United States. They go  
14 there to study and wind up living there on graduation.  
15 This \$3,000 first point would be of benefit to  
16 graduate students.

17 The graduate students argue, on their  
18 behalf, that they are the most important level of  
19 university education in the country, and that we  
20 are making a real mistake if we lose this type  
21 of person. As well, Mr. Chairman, point number  
22 one would apply to married students, those who  
23 must support children while they are attending  
24 university, and who take on jobs currently throughout  
25 the entire year in addition to their summer job.  
26 This also applies to those who are married or  
27 engaged in graduate studies who have a first degree,  
28 for example in engineering, and who can earn a  
29 substantial amount during the summer which can  
30 allow them to get to university to take perhaps  
a law degree or post graduate work. They earn  
this money and use it to support their children and





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3 spouses.

4 Finally, sir, point A would form a  
5 sort of symbolic term, if you can call it that,  
6 something which would make it implicit in the Act,  
7 that the Act favours those persons, as many as possible,  
8 attending university, since this is a good thing for  
9 the country as a whole.

10 MR. SULLIVAN: If I might just add to  
11 that as well, we are asking for deductions and  
12 exemptions. I think they should be considered  
13 in the light in which we are asking for them. We  
14 are asking for them as students, because many of us,  
15 as you know, will be stepping into an income bracket  
16 in which you advance very rapidly once you are there,  
17 particularly the professional man such as a dentist,  
18 and other similar occupations. These people will  
19 be bearing their burden to the community at a very  
20 high level when this time does arrive.

21 Our problem is that at a time when it  
22 is really not ours to bear such a burden we should  
23 not be asked to do so. I am speaking for the law  
24 students whom I know, who are very drastically in  
25 debt when they come out of law school. This applies  
26 to graduate students as well who finance their  
27 own education as well as some minimal living  
28 expenses. So that in the spirit that they were  
29 suggesting these exemptions and deductions one must  
30 bear in mind that we will be meeting our obligations  
to the community when it is time for us to do so.

THE CHAIRMAN: I directed my first question





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3 to you because I was wondering whether there was  
4 not a better way to accomplish this end, rather  
5 than giving the actual benefit of it to students  
6 with \$10,000 instead of to students with \$4,000,  
7 that is all. There might not be a better way;  
8 perhaps this is the best way to do it. I do not  
9 think you are seeking to help the \$10,000 a year  
student, are you?

10 MR. FRASER: We are not in the main,  
11 Mr. Chairman. I think that some of the limitations  
12 will help the student at the lower income level,  
13 and this particular one, I might emphasize again,  
14 is purely based on the idea that we should provide  
15 protection up to the level of the university expenses  
whether that is earned by the average or not.

16 THE CHAIRMAN: Very well. Then B is:  
17 "Provide an exemption for transportation  
18 costs incurred by a student or parent  
19 in allowing said student to attend  
20 the nearest university where he may  
21 obtain instruction in one of the two  
22 official languages of Canada, providing  
23 there are no universities containing  
24 the desired faculty in reasonable  
25 proximity to (i.e.: within 50 miles of)  
26 the student's residence that provide  
27 instruction in the one of the two  
28 official languages employed by the  
student."

29 When you talk of transportation costs, I  
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3 suppose you mean only those essential transportation  
4 costs of getting there in the first instance and  
5 getting back in the summer. Do you have to spell  
6 out whether that includes a break for Christmas  
7 or a break for Easter? You are not going to  
8 permit people to travel back and forth every weekend  
and obtain a deduction, are you?

9 MR. FRASER: Not at all. I think  
10 Mr. Jenkins might have a word to say on that.

11 MR. JENKINS: Before I do that, sir,  
12 I notice you put emphasis upon the word "parent"  
13 when you read our recommendation. When we say  
14 "incurred by the parent" here we mean simply the  
15 bill of the student for the travel being paid by  
16 the parent, not the parent travelling himself  
to visit the student at university.

17 On your major point of when should  
18 such an exemption be allowed, we would limit this,  
19 of course, to travelling to university in the  
20 Fall and travelling home in the Spring. As well,  
21 consideration could perhaps be given to the student  
22 travelling home at Christmas and then back again  
23 to university. I say that because it is very  
24 beneficial for the student's studies not to spend  
25 that time sitting in an empty residence at the  
26 university, since most students do try to get back  
home at Christmastime.

27 I would stress, Mr. Chairman, that this  
28 is a point that is brought out to aid students who  
29 are isolated in an area where the universities do  
30 not teach in a language which that student speaks.





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3 In effect, it represents the bicultural nature of  
4 Canada and will overcome some of the problems that  
5 we have in giving consideration to our minority  
6 groups in Canada.

7 Finally, this is a point that does  
8 not benefit as many students as, for example, point  
9 C, which is a very inclusive point. We did add  
10 that point B because of the significance of it in  
11 the bicultural field. I would stress that these  
12 points are not listed in order of importance. We  
13 will, we hope, in response to your questions in  
14 the process of going through the brief, point out  
15 what we think are the most valid suggestions.

16 THE CHAIRMAN: Thank you. Is there  
17 anything further on that?

18 COMMISSIONER WALLS: I just wondered  
19 whether, if you got A, you would need B. If you  
20 got the \$3,000 exemption, would that not cover any  
21 travelling expenses?

22 MR. JENKINS: Point B would also allow  
23 the parent to deduct his expenditure. Point A  
24 strictly applies to the student himself.

25 COMMISSIONER WALLS: Yes, I see.

26 COMMISSIONER GRANT: We must not lose  
27 sight of the fact that at some time or other the  
28 parent already has a deduction for a student at  
29 university which, if you were to capitalize it,  
30 probably amounts to somewhere around \$1,250.

THE CHAIRMAN: That is Section 26/1/c,  
which says the student must be 21 years or over and





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3 in full-time attendance at school or university. I  
4 am not sure that I understand C, which is:

5 " Amend Section 11/1/qb to allow  
6 any taxpayer to deduct the tuition  
7 fee of a student who now qualifies  
8 for tuition fee deduction under  
9 Section 11/1/qb, and who qualifies  
10 as a dependent of that taxpayer  
11 under Section 26/1/c/111 or Section  
12 26/2." I think that is the one I  
13 think that is the one I quoted.

14 You will have to explain why that is there.

15 MR. FRASER: Certainly, Mr. Chairman.  
16 Just before I came home for my Christmas holidays  
17 from the Bar Admission Course, I received a slip  
18 of paper from the Bar Admission Course certifying  
19 that I had paid a certain amount in fees, which  
20 I personally can deduct from my income tax if  
21 I should reach the position where I pay any, which  
22 is doubtful. Were I being supported by a parent  
23 or were I depending on somebody else, the person  
24 who supported me would not be able to use this.  
25 This particular circumstance occurs quite fre-  
26 quently in such places as the Maritimes, where  
27 there are many young ladies attending college  
28 who do not earn enough money to pay income tax,  
29 and they have a slip which would allow them to  
30 deduct their tuition fee. Their parents are  
covering the entire cost, or practically the  
entire cost, of their education, and we merely







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3 wish to pass this relief on to the parents.

4 THE CHAIRMAN: Thank you very much,  
5 I see the point.

6 COMMISSIONER WALLS: I suppose there  
7 is an increasing number of spouses who now carry the  
8 same cost, rather than parents. In other  
9 words, married students whose wives are working  
10 as stenographers and so on. Perhaps the need  
11 for this is even greater than it is with the parents.

12 MR. FRASER: That is very true, sir.

13 THE CHAIRMAN: You make the point  
14 in one of your schedules that more fees are paid  
15 by spouses than anybody else, I think.

16 COMMISSIONER WALLS: We lived in the  
17 wrong generation!

18 THE CHAIRMAN: I am not sure. It  
19 depends on which side of this you are on. My  
20 daughter supported a student husband, I remember.

21 MR. FRASER: If the Commission would  
22 allow me, I think Mr. Jenkins might have a couple  
23 of additional comments to make on this particular  
24 proposal.

25 THE CHAIRMAN: Certainly.

26 MR. JENKINS: Thank you. At this time  
27 I should like to emphasize point C as strongly as  
28 possible. We feel that of all the points we  
29 are bringing before you this is the one which  
30 will extend some kind of benefit to all the  
students in Canada, either through their parents  
or the students themselves. The existing deduction





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3 allowed applies, of course, only to the student  
4 himself, and there are many, many students in  
5 Canada who do not earn the basic \$1,100 exemption  
6 which each one of them has. In fact, I have  
7 just returned from the Maritimes, and they were  
8 quite concerned there about this point. They  
9 said that it is not only the females who do not  
10 earn more than \$1,100 during the summer, or during  
11 the year, but many, many of the male students in  
12 those provinces, and they contended across the  
country.

13 We estimate, although we have no  
14 statistics to back this up, that about 30 to 40  
15 per cent only of the students in Canada are taking  
16 advantage of the present ability to deduct their  
17 fees. In the Maritimes the students argue that  
18 only about 20 per cent of the students are taking  
19 advantage of this present clause. The argument  
20 is that if the students cannot do it, why could  
21 this not be simply passed on to the parents? The  
22 machinery for this exists. We have the registrars  
23 turning out these slips which Mr. Fraser has just  
24 held up to you. There is no reason why every  
25 student should not receive such a slip making  
26 fees deductible, and either he would use the slip  
27 himself or pass it on to his parents. This would  
28 be something tangible which, as I say, would extend  
to every single university or technical institute  
student in Canada.

29 COMMISSIONER GRANT: I have a little  
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3 knowledge of what students earn from my own family  
4 experience, and it depends, of course, on what  
5 employment they are successful in getting in the  
6 summer months. For instance, if they go to a  
7 hotel and work as a waitress, if a girl, or if a  
8 young man as a bellhop, I believe the best that  
9 they can come out with would be somewhere around  
10 \$500 or \$600. If, on the other hand, they are  
11 in the Navy and they get on the Reserve, they  
12 can do handsomely. Also, if they are in the Air  
13 Force, and get a teaching job, they can do very  
14 well. In other words, if they get government  
15 employment in a capacity like that they do very  
16 well, but they are quite restricted, are they not?

16 MR. JENKINS: It is very difficult  
17 for students to do that well in the summer, particularly  
18 in the crucial years between the first and the  
19 second year, and again between the second and the  
20 third. They are too young to be well qualified,  
21 and that is the stage where they drop out of  
22 university and lose their opportunity to carry  
23 through and get their degree. In the Maritimes,  
24 it was again pointed out very forcefully to me  
25 that you would have to earn \$80 a week during the  
26 summer, and this is during the 15 weeks which you  
27 have free, to pick up \$1,200 in summer earnings.  
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2 You would just barely qualify for a deduction on  
3 \$100 of this income only, so you would save \$14 or so.  
4 They argued that very, very few students make more  
5 than \$80 a week during the summer. In fact, we could  
6 not find anybody in this particular meeting I was  
7 addressing who actually qualified. This is a very  
8 high figure for the Maritimes, and I would say for  
9 anyone that this stage in their education across the  
10 country.

11 COMMISSIONER GRANT: Have you considered  
12 the students in other parts of the country?

13 MR. JENKINS: Simply through speaking  
14 and answering questions, sir. We could perhaps  
15 carry out a survey along this line. It would be quite  
16 involved, but I think it would be of value. But we  
17 do not have a survey that backs up the statements I  
18 have just been making. We simply feel that only  
19 about 30% or 40% of the students in Canada are  
20 benefiting right now.

21 THE CHAIRMAN: I think we would all  
22 agree that it is a most uneven and precarious income.  
23 I have seen the figure of \$3,000 earned by a student  
24 during the summer on the pipe line, but next year  
25 I think he got \$300 or \$400, or something like that.

26 MR. SULLIVAN: Particularly if he  
27 works for an accountant or for a lawyer.

28 THE CHAIRMAN: Then in D you say,  
29 "Allow tuition fees paid by part time students to  
30 be deducted". I would have thought that would require  
a great deal of regulation and some difficulties to





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2 put into effect.

3 I am wondering whether it would not  
4 involve more difficulty than the benefit that would  
5 be derived. There are a great many people taking  
6 part time courses of all kinds. There are accountants,  
7 lawyers, housewives, construction workers and every-  
8 thing else. Are you going to allow this to apply  
9 to everybody?

10 MR. JENKINS: Perhaps it might be  
11 wisest to limit the deductibility of the fee to  
12 tuition fees paid for courses that are of university  
13 standing, if you thought that might ease the  
14 administrative problem.

15 These are the people that we, of  
16 course, are most concerned with. We have many students  
17 in this category. Take, for example, those in  
18 Montreal who are taking evening courses and part  
19 time courses. They have many points that they can  
20 make on their behalf, such as that they do not qualify  
21 for any of the scholarships. These are limited to  
22 full time people, and these part time students who  
23 may be spending a lot of time taking two courses,  
24 for example, just do not qualify for any of the  
25 scholarships that are available.

26 As well they are making a personal  
27 sacrifice, they contend, in taking these part time  
28 courses. They are doing something that they hope  
29 will better their qualifications, perhaps for  
30 monetary reasons, but at least they are doing what is  
regarded as something that is a universal good, like





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3 motherhood in Canada, by increasing their education.  
4 Whether that is a benefit or not, we will not argue;  
5 but they are attempting to improve their qualifications  
6 and it is a great disadvantage to them financially,  
7 and I would think that there should not be too many  
8 administrative difficulties,

9 This could be carried out by the  
10 registrars just as it is carried out under the present  
11 scheme. You get a slip from the registrar saying  
12 that you have taken this course, and the registrar  
13 could be instructed that he has to give these slips  
14 out only in reference to certain courses. You may  
15 wish to limit this to those of university calibre.  
16 But we would think there are many other courses that  
17 are of great value, English courses, even cultural  
18 courses.

19 THE CHAIRMAN: Surely there has to be some  
20 limit. You are not going to apply this to domestic  
21 science, and so on, are you, and suggest that they get  
22 a tax deduction in respect of all these things?

23 MR. FRASER: Directing myself at the  
24 moment to your point about administrative feasibilities,  
25 Mr. Chairman, I think at the present moment the  
26 registrar has to limit the number of slips he hands  
27 out to those he can determine are full time students.  
28 Perhaps it might be simpler just to say that anyone  
29 who has registered will get a receipt for the fees  
30 that he pays and that could be used for this type of  
deduction.







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3 In answer to your second point, I think  
4 that within the framework of full time tuition fee  
5 deduction you will find such courses as you have  
6 mentioned, and I do not think it goes too far in  
7 extending it to taking in those courses individually,  
8 although I agree there must be some limit to it.

9 THE CHAIRMAN: What would you say if  
10 it were granted to degree courses, as opposed to  
11 diploma courses; would that be a fair distinction?

12 MR. FRASER: I would think it would  
13 possibly be better classified by the institution  
14 rather than by the course, Mr. Chairman.

15 THE CHAIRMAN: Then in E you say:  
16 "Increase from \$950 to \$1,200  
17 the amount which a dependant  
18 who satisfies the conditions  
19 now required for the existing  
20 tuition fee reduction may earn  
21 and still be claimed as a  
22 dependant under Section 26(1)(c)(iii)."

23 You refer the Commission to table 45<sup>3</sup>,  
24 and so on and so forth. Is there anything on this?

25 COMMISSIONER WALLS: This is much the  
26 same as they have been discussing, about the limitation  
27 of earnings.

28 THE CHAIRMAN: Do you want to speak  
29 to this section at all? We have read your explana-  
30 tion and understand it.

The next section is:





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2 "Increase from \$550 to \$1,200 the  
3 deduction for dependents to satisfy  
4 the conditions now required for  
5 the existing tuition fee deduction."

6 That is Section 11(1)(q)(b). That is  
7 because tuition fees are now going up, are they,  
8 and getting beyond what is permitted?

9 MR. FRASER: It is essentially because  
10 it is just simply costing -- as it is described in  
11 our statistics -- the parental family more to send  
12 the child to school. I think from your own direct  
13 experience, sir, you might have some particular  
14 evidence on this.

15 THE CHAIRMAN: The next is:  
16 "Proposals 1 through 7 of the brief  
17 submitted by the Canadian Universi-  
18 ties Foundation to the Royal  
19 Commission on Taxation".

20 That concerns donations and matters of  
21 that kind?

22 MR. FRASER: Yes, Mr. Chairman.

23 THE CHAIRMAN: I think we understand  
24 what you are putting before us. You have put in an  
25 addendum H which says:

26 "Allow scholarship assistance given  
27 under certain circumstances to be  
28 deducted."

29 You draw the distinction between  
30 scholarships and fellowships and point out that it is  
illogical for there to be that distinction in income





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2 tax law; is that right? One is taxable and the other  
3 is not?

4 MR. SULLIVAN: Are you referring to  
5 Mr. Fraser's remarks earlier, Mr. Chairman, as to  
6 distinctions between scholarships and bursaries?

7 THE CHAIRMAN: No, I am not. I am sorry;  
8 this is not here. It is another brief. Would you  
9 like to speak to this, Mr. Sullivan?

10 MR. SULLIVAN: Yes, Mr. Chairman. It is  
11 designed because we feel that the business corporation  
12 in this country can assist the government, if you  
13 like, or perhaps bear their part of the burden  
14 which the government is now bearing for education.  
15 There is no need, it seems to us, in a so-called  
16 free enterprise economy for government to bear the  
entire expense of education.

17 This is designed to be a relief  
18 provision for corporations in addition to the general  
19 charitable donations, in order that the money which  
20 they give to universities for scholarships can be  
21 deducted as an expense. We feel that corporations  
22 will enter into this because of the public relations  
23 value to them and the benefit to the community which  
24 will accrue. But there have to be restrictions upon  
25 the giving of the money. Under the Act now, as I  
26 understand it, if the student goes back to the  
27 corporation the scholarship is taxed as in the hands  
28 of the student because it is income from an office,  
29 even though the office comes later. This is my  
30 understanding, at least.







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3 Scholarships are not now taxable if  
4 they come from the university itself. This would  
5 encourage corporations to give this amount of money,  
6 and it would not allow them, at the same time, to  
7 give it to students of favoured employees, because  
8 they would have to meet tests set by the universities,  
9 which would give the scholarships money out and it  
10 would come from the assistance fund, or whatever it  
11 is. It would be listed in the university records  
12 as "Shell Oil Fund, six scholarships available".  
13 That would cut out the favoured employees position.  
14 It would also, I think, philosophically provide a  
15 greater base for the support of education in this  
16 country.

17 THE CHAIRMAN: Does this fit in with  
18 your original statement that your organization supports  
19 the view that students should obtain an education,  
20 and are entitled to obtain an education, irrespective  
21 of their ability, or the parents' ability, to  
22 pay for the education?

23 I am curious as to what extent you are  
24 prepared to advocate education as a public charge.  
25 We accept that up to -- at least, in the province  
26 in which I live -- primary and secondary schooling  
27 it is a public charge, and I dare say it is not a  
28 very radical thought to think that university fees  
29 should be either a public charge or provided in some  
30 way apart from the students. Would your philosophy  
include the sustenance of the students while at  
universities? Are you intending to suggest that





1  
2 students are entitled to their living disbursements  
3 from the public purse?

4 MR. FRASER: I think that the definition  
5 of the word "public" from our point of view must be  
6 made in this way. When we say "public", we are  
7 talking about the pluralist society; we are talking  
8 about every element of it. We do not particularly  
9 mean companies; we do not particularly mean business,  
10 or the student himself. But we feel that all three,  
11 and any additional group beyond them, should  
12 contribute, and they should all contribute to all  
13 these costs. We feel that some help from government  
14 might go to sustenance, and some help in connection  
15 with scholarships from private industry might go  
16 to sustenance, and some help from the student himself  
17 might go to this.

18 We envisage all groups working together.  
19 We do not believe this charge should be laid on the  
20 government as such.

21 THE CHAIRMAN: I have been appalled  
22 at the figures I have seen recently of the total costs  
23 of education and higher education, if one includes  
24 sustenance.

25 MR. JENKINS: Perhaps I might be  
26 permitted to add a small point, Mr. Chairman.  
27 It is simply that I think we are making a fair  
28 representation of the views of the students of  
29 Canada here in calling for greater support by way of  
30 scholarships from industry. We do have within our  
organization which is centred in Quebec those who are





1  
2 calling for free education right now. They believe  
3 that tuition fees and sustenance should be handled  
4 by the provincial government. The academic side of  
5 it is handled by governments throughout this country  
6 up to grade 12, and they say it is simply a logical  
7 extension to pass this on to government at the  
8 university level.

9 We do not think that is unanimous  
10 across the country. In fact, as we have said, we  
11 feel that since our system is based upon free enter-  
12 prise and capitalism, we had better have a bit of  
13 justification from the capitalists and the free  
14 enterprises by way of scholarship donations. If  
15 they are to make this country continue in its strong  
16 democratic traditions, they are going to have to  
17 share a little bit more.

18 We feel that through the taxation area  
19 they can be encouraged to do this, and the end result  
20 will be that we will have a healthier education system  
21 and, I think, a generally more healthy outlook in the  
22 country.

23 THE CHAIRMAN: I think I wanted to test  
24 your philosophy on that because I was curious as  
25 to why you have put this in here. But I think you  
26 have explained it very well indeed.

27 I would point out that of course the  
28 Canadian public, through industry and generally,  
29 is now supporting education in, I would have thought,  
30 a moderately generous manner. Undoubtedly it is not  
enough. But I also think there is evidence that a









1  
2 great many parents believe that this should not become  
3 entirely a state matter. The evidence that I can  
4 give you is that I am associated with something called  
5 Canadian Scholarship Trust, and that has been  
6 eminently successful. It has only been successful,  
7 of course, to parents of future students -- "future"  
8 quite a long way -- who are prepared to make payments  
9 for the education of their children over the next  
10 10 or 12 years. To me that is a very hopeful sign  
indeed.

11 MR. SULLIVAN: Once again, Mr. Chairman,  
12 is that not predicated on the ability of the parents  
13 to pay for it? I would go further than my friends  
14 here and say that there should be free education in  
15 this country at least to the level of university.  
16 If the government cannot pay for it, someone should  
17 start paying for it, because we need it. It is that  
simple.

18 THE CHAIRMAN: You would go so far as  
19 to include sustenance in that?

20 MR. SULLIVAN: Yes, normal residence.

21 THE CHAIRMAN: Tuition fees at the  
22 university level are, I think, very largely paid from  
23 the public purse.

24 MR. SULLIVAN: Percentagewise they  
25 are very largely paid from the public purse; but  
26 still to live at the University of Toronto for a  
year requires \$1,300.

27 THE CHAIRMAN: That is correct.

28 COMMISSIONER WALLS: I notice you say  
29  
30





1  
2 that the incubation of this idea came from Section 72,  
3 which of course deals with the research provision.  
4 Actually the incubation might have come from it,  
5 but it is entirely contrary to the spirit of  
6 Section 72, in that Section 72(1) says that the  
7 research must be related to the business carried out  
8 by the taxpayer, and secondly that the extension of  
9 the knowledge must be general and not confined to one  
10 person.

11 I imagine you are interested in it  
12 being confined to one person?

13 MR. FRASER: Merely the inspiration,  
14 that is all, came from that section, sir. I would  
15 like to point out what may be a small technical  
16 difficulty in points one and two under H which has  
17 concerned us a bit, but to which we have really no  
18 clear answer.

19 It is not our intention at all that  
20 any businessman creating a scholarship be able to  
21 create a class out of which a selection committee  
22 will choose the students on the basis of academic  
23 merit. For example, we do not intend at all that  
24 Du Pont be able to say, "This scholarship is for  
25 children of Du Pont employees and we leave it up  
26 to the university selection committee to choose those  
27 from this class". We want to keep this completely  
28 general.

29 COMMISSIONER GRANT: I was interested  
30 in the observation that was made a while ago. From  
your knowledge do you find that that is the general





1  
2  
3 practice of corporations which make scholarship  
4 grants?

5 MR. SULLIVAN: All of us, sir, have  
6 been involved in fund raising, from the point of  
7 view of our organization or organizations on our  
8 campuses, from corporations, and our biggest problem  
9 is the fact that there is a budget in this connection.  
10 I think it is 10% of the income of corporations  
11 which can be given in the way of charitable donations.  
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1  
2           The Board of Directors will sit down and  
3 select the charities they want to give to. Some will  
4 be the Red Feather, the Red Cross and perhaps an  
5 education institution and they will budget for the year  
6 or perhaps the next two or three years. It is very  
7 difficult to get them to change. Also, we would not  
8 want to take money away from the Red Cross or Red  
9 Feather or United Appeal. We think that education is  
10 a need which goes in a sense even beyond that. This  
11 provision is continuous in the normal corporation  
giving which can give 10 per cent.

12           THE CHAIRMAN: Do you know what the average  
13 percentage of corporate giving is to corporate income?

14           MR. SULLIVAN: Ten per cent.

15           THE CHAIRMAN: The average is 1.2 per cent.  
16 The limit is ten per cent.

17           COMMISSIONER WALLS: You will have to do  
18 some more canvassing.

19           THE CHAIRMAN: There are very very few  
20 companies that are pushing the limit. There are some,  
21 but very few.

22           MR. SULLIVAN: Can you tell us why?

23           THE CHAIRMAN: No, I can't tell you anything  
24 more than I have just told you. I can only tell you  
25 what the facts are.

26           COMMISSIONER GRANT: I can give you one  
27 reason why. That is that this money belongs not to  
28 the company. It belongs to the shareholders. These  
29 shareholders have the right to say what will be given  
30 and what will not.

          THE CHAIRMAN: I am certain that many





1  
2 companies could well afford to increase their giving.  
3 I have said that publicly on many occasions and I hope  
4 they will increase their giving both to education and  
5 to other matters. I have been at company meetings where  
6 their shareholders have in fact criticized the directors  
7 for not giving away enough money so there are certain  
8 areas for consideration. Is there anything further?

9 COMMISSIONER MILNE: I have one question to  
10 ask in respect of awarding of scholarships. This may  
11 be hearsay but I recall hearing or reading that every  
12 year Canadian universities have a number of scholarships  
13 that are not taken up simply because nobody has applied  
14 for them. Would this be so?

15 MR. JENKINS: Thank you Mrs. Milne for that  
16 question. It is one that I think can almost be called  
17 folk-lore that we get from the various service groups  
18 across the country.

19 It is true that there are scholarships that  
20 are not taken up. These are usually of the type to  
21 which Mr. Fraser has referred. They are limited. I  
22 will give you an example of my home province. There  
23 was an offer by the Calgary Herald to left-handed  
24 carrier boys who have delivered the Calgary Herald in  
25 a line running south of Red Deer. I will withdraw the  
26 left hand reference. That was facetious. There are  
27 many of them that are qualified like that that simply  
28 do not have anyone in that field. There is no one  
29 available to take these up because I can assure you  
30 there is an additional course that every student carries  
while he is going to university, if he has good marks,  
and that is ferreting out scholarships. The lists are







1  
2 gone over very carefully. If a scholarship has been  
3 announced, there will be applications for it.

4 We have looked into this because it is  
5 a terrible thing to have said. I would like to say  
6 that we would like to dismiss it as folk-lore or as a  
7 myth. There are simply not enough scholarships in  
8 Canada and the ones that are available are readily  
sought after and used.

9 THE CHAIRMAN: Now, it is only fair to the  
10 Calgary Herald to point out that the Calgary Herald  
11 annually provides three scholarships of \$7,500 a year  
12 each for newspapermen and not restricted to its own  
13 employees and in fact it has nothing to do with its  
14 own people.

15 Is there anything further? I think this has  
16 been a very interesting discussion indeed. We have got  
17 no further questions. We understand your point that  
and we will certainly consider them.

18 As I said at the beginning, anything we can  
19 do to advance education in Canada, without giving away  
20 too much public funds, we will be glad to recommend.  
21 Of course, whether this is the right sort of thing,  
22 I don't know. We will have to consider it and we shall  
23 consider what you have said. Thank you very much  
24 indeed for your help today. We have been very glad  
25 to see you and your representations have been put forward  
I think clearly and forceably and again I thank you.

26 MR. JENKINS: Sir, on behalf of the Canadian  
27 Union of Students I would like to thank you and the  
28 Commission for allowing us to appear here today and I  
29 would to close, if I may, with a sentence or two  
30







1  
2 emphasizing the areas of concentration of our brief.  
3 It is simply that we feel that if possible taxation  
4 benefits should be extended to the parents of those  
5 who are now attending Universities and technical  
6 institutes in Canada. The parents are the people who  
7 are bearing the burden here and we feel that there  
8 are simply not special concessions and if there are  
9 they are not adequate. We think this concession: for  
10 students who can deduct their fees -- we do not think  
11 in many instances students earn enough money to deduct  
12 their fee but the parents or most parents could make  
13 use of such deductions. I would therefore like to  
14 emphasize point "C" in our brief. I would like to  
15 emphasize two other points that benefit parents, that  
16 is "E" and "F".

17 Again, we must simply stress it is hard to  
18 benefit students by deductions because they do not  
19 have the income to which deductions could apply. There  
20 is no room, there is no flexibility. I would also  
21 emphasize "H", the idea of encouraging industry to  
22 donate to the supply of scholarships.

23 I will close by emphasizing the point we have  
24 made that taxation is proving to be more and more the  
25 tool of social justice and we feel that this tool may  
26 be well used if in some way it can allow more studnets  
27 in Canada especially from the poor families to get to  
28 universities. Thank you.

29 THE CHAIRMAN: Thank you, Mr. Jenkins. That  
30 is a very happy note to end on. I must say that it  
actually gives me a lump in my throat to think of  
120,000 students considering their old man. Thank you





1  
2 very much.

3 THE SECRETARY: I think this is the most  
4 appropriate time to enter into the record another  
5 exhibit, 309, a brief from the Graduate Students  
6 Association of the University of British Columbia.

7  
8 --- EXHIBIT NO. 309: Brief from the  
9 Graduate Students  
10 Association of  
11 the University of  
12 British Columbia.  
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---On commencing at 2:30 p.m.

SUBMISSION OF THE CANADIAN LIFE INSURANCE  
OFFICERS ASSOCIATION

APPEARANCES:

Mr. H.L. Sharpe, President and  
Managing Director of the Northern  
Life Assurance Company

Mr. L. Campbell, Senior Vice-President,  
Sun Life Insurance

Mr. A.M. Campbell, President of Sun  
Life Insurance

Mr. W.J. Adams, Vice-President  
Canada Life Assurance Company

Mr. B.T. Holmes, Vice-President,  
Confederation Life Association

Mr. J.A. Tuck, Q.C., Managing Director  
and general counsel

Mr. G. Aitken, President of the Great  
West Life Assurance (Winnipeg).

Mr. L.J. Brown, Associate Actuary,  
Sun Life Assurance Company

Mr. A.W. Anderson, Vice-President and  
Secretary of London Life Insurance  
Company (London).

THE SECRETARY: Mr. Chairman and Commissioners,  
this afternoon the submission before you is from the  
Canadian Life Insurance Officers Association. Mr. Holmes  
is the president of the Association and he is here with  
his colleagues and will introduce them to you and will  
give a few opening remarks. I would like to enter  
this brief into the record as Exhibit 310.

---EXHIBIT NO. 310: Brief of the Canadian  
Life Insurance Officers  
Association.

THE CHAIRMAN: Thank you, Mr. Secretary. Good  
day, Mr. Holmes and gentlemen. We are very grateful







1 to you for having put something to us and for appearing.  
2 I think you are doing so primarily at my request. I  
3 appreciate it. We are anxious to know more about  
4 taxation of life insurance firms and in fact life  
5 insurance in order that we may explore this as fully  
6 as possible within the limits of time. We have asked  
7 our counsel, Mr. Coyne to lead the questions. We have  
8 all read the submission that you have put before us.  
9 Before doing that, is there anything you would like to  
10 say?

11 MR. HOLMES: Yes I would, Mr. Chairman. First  
12 of all I would like on behalf of our group representing  
13 the Life Insurance Companies to express our pleasure  
14 at being with you this afternoon. We hope that we may  
15 be helpful to you in the work of your Commission. I do  
16 want to introduce those who are with me to you. First  
17 of all I have the vice-president of the Association,  
18 the first vice-president of the Association who is the  
19 vice-president and managing director of Northern Life  
20 Assurance Company, Mr. Sharp at the end of the table;  
21 the past president of the Association and president of  
22 the Sun Life Assurance Company of Canada Mr. A.M.  
23 Campbell, and then we have the standing committee of  
24 the Association concerned with taxation. Its chairman  
25 Mr. W.J. Adams, vice-president of the Canada Life  
26 Assurance Company and then those on his committee and  
27 working with it, Mr. George Aitken, vice-president and  
28 comptroller of the Great-West Life Insurance Company.  
29 Mr. A.W. Anderson at the end of the table, vice-president  
30 of the London Life Assurance Company. Mr. Lochlin





1 Campbell, sitting beside Mr. Alastair Campbell, the  
2 senior vice-president of the Sun Life Assurance Company.  
3 Mr. L.J. Brown next to Mr. Anderson, the associate  
4 actuary of the Sun Life Assurance Company and then we  
5 have the Association staff, Mr. J.A. Tuck, managing  
6 director and general counsel of the Canadian Life  
7 Insurance Officers Association. Mr. Frank Demmick, the  
8 secretary of our Association and Mr. W.T. Morgan, the  
9 assistant general counsel.

10 Now, as you said we are here partly because of  
11 your request although I believe we expressed to you  
12 throughout a willingness to come when you wished us.  
13 We have forwarded to you this outline of the taxation  
14 of life insurance in Canada. We then received your  
15 letter of December 13th indicating certain areas of  
16 concern that you would like us to comment on.

17 We have prepared a memorandum dealing with  
18 these areas of concern and taxation in general as it  
19 affects us. I would like to emphasize two things. We  
20 did not think we should dignify this memorandum with  
21 the name of a submission although we have prepared it  
22 with care. For one reason, we have not been able to  
23 have a full meeting of our membership since we received  
24 your letter. We are confident we are expressing the  
25 views and the opinions at the disposal of the life  
26 insurance companies across Canada. We have not been  
27 able to formally submit it to them. I think you will  
28 see it is more or less informal in character although  
29 it has been prepared with as much discussion and study  
30 as possible.





1           What I would like to do, Mr. Chairman, with  
2 your approval, is to ask Mr. Tuck to use this memorandum  
3 to review it with you. We have copies with us. We  
4 think it would be easier if you had it in front of you,  
5 as it was reviewed. If that meets with your  
6 approval, that is what we would like to do.

7           THE CHAIRMAN: Thank you very much. It meets  
8 with our approval indeed. We are indeed happy to put  
9 the views placed before us on the record which is a  
10 public record of course. I think there might be  
11 perhaps some choice in regard to this because you have  
12 prepared it at the request of our staff but on the other.  
13 hand you are submitting it to us in a public hearing.  
14 I think it is best placed on the record.

15           MR. HOLMES: Yes we just wanted you to  
16 realize it is of a somewhat informal character.

17           THE SECRETARY: Shall we place it on the  
18 record as Exhibit 311?

19           ---EXHIBIT NO. 311: Additional memorandum  
20 from the Canadian Life  
21 Insurance Officers  
Association.

22           MR. TUCK: Would it meet your pleasure if we  
23 went down this memorandum together. It is not very  
24 lengthy. It is twenty-three pages but they are doubled  
25 spaced. Very early in this memorandum, in these notes  
26 as they are labelled, we do get to a review of the  
27 earlier documents we sent to you.

28           At this time, if it is your wish or Mr.  
29 Coyne's, we would be glad to hear any questions which  
30 you wish to make to us on the earlier memorandum.







1 THE CHAIRMAN: In discussing our procedure  
2 before with Mr. Coyne, it seemed to me logical that we  
3 start off to a complete understanding of the manner of  
4 proceeding to tax life insurance companies, which you  
5 have pretty well covered in your main submission here.  
6 It was just by thought it was a suitable opportunity for  
7 us and leading from there to the questions that were  
8 submitted to you. However what I am saying has been  
9 taken up in this document which you have handed to us.  
10 Let us proceed in the manner you are suggesting.

11 MR. TUCK: There are really only two pages  
12 in these notes that precede the memorandum originally  
13 filed, and they do show who we are and a little about  
14 us.

15 THE CHAIRMAN: Well then, supposing you take  
16 us to the memorandum.

17 MR. TUCK: Yes.

18 THE CHAIRMAN: Do you wish to go right through  
19 the memorandum and then have questions asked afterwards?

20 MR. TUCK: I think that we are in your hands  
21 on that. I think there are some questions which you  
22 might put to us we may deal with right away. There  
23 are others where it might be best to leave the discussion  
24 to a later point in the memorandum because we have  
25 elaborated on it there. If you don't mind, when a  
26 question is asked, I could indicate to you where it is  
27 covered in our memorandum.

28 THE CHAIRMAN: I think in the interests of  
29 getting along with this perhaps what we will do, if you  
30 agree, is to hold any questions until the middle of





1 page 11. There is a break there.

2 MR. TUCK: Yes.

3 THE CHAIRMAN: At that time, we can clear up  
4 anything which may have occurred to us. We will make  
5 marginal notes in the brief.

6 MR. TUCK: That would suit us very well.

7 Who we are.

8 The Canadian Life Insurance Officers Association  
9 is a voluntary organization of 99 companies in the life  
10 insurance business in Canada. These companies have  
11 \$60 billion of life insurance in force in Canada  
12 representing 99 per cent of the total life insurance  
13 (excluding fraternal benefit insurance) owned by  
14 Canadians.

15 Of the 99 members of the Association, 49 are  
16 Canadian, 35 are from the United States, 12 are British  
17 and three are from other European countries. Thirty-  
18 nine of the 99 are mutual companies and 60 are companies  
19 with capital stock.

20 Canadian life insurance companies with capital  
21 stock have always transacted a substantial portion of  
22 their business on the participating basis. This  
23 business is, by and large, analogous to the business  
24 of a mutual company because the stock company is strictly  
25 limited by the Canadian and British Insurance Companies  
26 Act in the amount that may be transferred to the  
27 shareholders' account from the participating funds of  
28 the company.

29 As at the end of 1962 the total business of  
30 all companies in force in Canada fell into the following





1 categories.

2 We thought you might be interested in this  
3 breakdown first as between mutual and stock, 60 mutual  
4 and 40 stock. Next is between Canadian and non-  
5 Canadian 70-30. The next is participating and non-  
6 participating, by whatever class or nationality of  
7 company. Participating is 70 per cent, non-par 30.

8 Although we have not made a "head" count, we  
9 estimate there are over 10 million policyholders in  
10 Canada and thus the average amount of insurance owned  
11 is about \$6,000.00.

12 A great deal of other information is available  
13 in our Fact Book, copies of which have been sent to you.  
14 We thought this would mean it would not be necessary  
15 to go through all the statistics now. If there are  
16 areas in which additional statistics would assist your  
17 enquirey please let us know and we shall endeavour to  
18 supply them. We do wish at this time, however, to make  
19 the points that our business extends from one end of  
20 Canada to the other and that we serve a very large  
21 number of Canadians in all walks of life and with  
22 a wide range of incomes.

23 We are not advocating major changes in the tax  
24 position. Our position is that, at the moment, we have  
25 no significant changes to advocate respecting life  
26 insurance taxation. This does not mean the system is  
27 perfect in every detail or that we may not, from time to  
28 time, be advocating changes ourselves. As a matter of  
29 fact, two changes, one relating to group insurance  
30 and the other to annuities, were made in the Income Tax







1 Act a few weeks ago but these were of relatively minor  
2 importance compared with the substantial tax problems the  
3 Commission has been asked to consider.

4 We gave our descriptive memorandum to which  
5 you and Mr. Holmes referred. We sent to you earlier  
6 a memorandum entitled "Taxation of Life Insurance at  
7 the Corporate and Policyholder Level". This document  
8 had been virtually completed when the list of questions  
9 from your research staff arrived. The nature of that  
10 memorandum did not lend itself to incorporating answers  
11 to the questions. We shall comment on the questions  
12 during today's hearings.

13 Perhaps it might be desirable if we reviewed  
14 the highlights of the memorandum with you at this point.

15 I think at this point I might just go through  
16 the memorandum. I am not going to read it all but  
17 just to show what we have in mind and the headings that  
18 it covers. This is the document on the long paper  
19 which you have.

20 First we set out the Section of the Income  
21 Tax Act under which life insurance companies are taxed.  
22 You will note the words at the start "notwithstanding  
23 anything in this part -- this is Section 30 which gives  
24 the complete code of the taxation of life insurance  
25 companies in Part 1 of the Income Tax Act. The basis  
26 are stated as the amount credited to the shareholders  
27 account and then certain deductions are listed. And  
28 then I would like to refer to a section of the Canadian  
29 and British Act and the limits of participating  
30 in profits going to shareholders and ask you to note





1 that the Statute states: "The directors of the company  
2 may set apart such portion of the net profit as they  
3 deem safe and proper for distribution to the shareholders  
4 and holders of participating policies."

5 And then the Act goes on to impose limits  
6 whereby 90 per cent to 97½ per cent, depending on the  
7 size of the company, must be allocated to participating  
8 policyholders.

9 At the bottom of page 2 we go on to describe  
10 the ins and outs of Section 30 and on page 3 briefly  
11 refer to tax rates which are, of course, the normal tax  
12 rates.

13 And then referring to deductions which are at  
14 the bottom of the page relating to provincial income  
15 tax and you are very familiar with the deduction that  
16 is allowed, of course. Then forward income taxes are  
17 referred to and described with the deductions. Later  
18 on we will come to one of the questions on this point.  
19 We will make some comment. This is just factual  
20 background. Our comments are in what we will come  
21 to later.

22 Then, under the heading of provincial income  
23 tax we pointed out that the provinces now impose income  
24 tax on all corporations. May we point out that in all  
25 of these the principles of Section 30 of the federal  
26 income tax are followed and life insurance companies  
27 must credit that to the shareholders account.

28 Over the page we give the rates of provincial  
29 taxes and then we go on to refer to the provincial  
30 premium tax making the point that there is no federal





1 premium tax. There are provincial taxes in every  
2 province. We give the basis, the key points of the  
3 annuity considerations which are not taxed. The  
4 ~~province of residence~~ basis is used. Dividends are  
5 a deductible revenue. The basis of accounting is used  
6 and direct plus reinsurance received is used and then  
7 reinsurance is deducted. What is stated here on this  
8 page relates to all provinces. All ten provinces are  
9 uniform on these principles that are enunciated here.

10 On page 6 we refer to the differences in  
11 requirements of details for some provinces. There are  
12 other minor differences too, different dates for paying  
13 taxes and some require advance payments and some do not.

14 Then we go on to policyholder. Dealing first  
15 with life insurance we point out that lump sum death  
16 benefits are not taxes. They are regarded as a capital  
17 receipt. In the case of instalment settlements the  
18 interest portion of the settlement is taxed and then  
19 over on page 7 we refer to surrenders being treated in  
20 the same way as death claims, depending whether they  
21 are a lump sum or an instalment. Similarly with  
22 matured benefits, and then we refer to policy dividends  
23 and here when we talked earlier about insurance policy  
24 proceeds not subject to income tax, by proceeds, we  
25 include policy dividends which are returned premiums.

26 Then we go on to individual annuities and  
27 point out that the interest portion only of the annuity  
28 payment is subject to income tax. Over on page 8 we  
29 refer to the surrender proceeds treated the same as  
30 life insurance standard in respect of contracts entered









1 into before the 14th day of June of last year. This  
2 is one of the amendments I made mention to earlier,  
3 that a contract subsequent to June 14th of last year,  
4 that part of the proceeds consisting of interest  
5 accumulated prior to that date offset in the annuity is  
6 now taxable where the contract is cashed out. Death  
7 benefits from annuities, tax benefits of life insurance  
8 proceeds.

9 Then there is a part of the memorandum that  
10 deals with annuities on a de-registered retirement  
11 savings plans and we point out that the whole annuity  
12 payment is normally taxable. On a de-registered where  
13 there is a surrender, there is a tax which is at a  
14 minimum rate of 25 per cent. Death benefits after  
15 maturity will be taxable in the hands of the recipient  
16 and then on death before maturity there is a rather  
17 interesting tax applicable to the registered retirement  
18 savings plans. This is a special tax provision which  
19 has not been used for the ordinary pension plans, for  
20 group pension plans but for retirement savings plans  
21 there is a flat tax of 15 per cent on the death  
22 benefit for an insured. This is, of course, the  
23 savings portion in the retirement savings plans. If  
24 there is an insurance element in it, it is not  
25 taxable.

26 --

27 --

28 --





1           Then we go to pension plans and pension  
2 benefits being fully taxed, and deal with surrenders  
3 on the termination of service. We point out that the  
4 optional method of tax can either be taken as income  
5 in the regular way or a special section of the Act can  
6 be used under which tax is applied at the average rate  
7 of the taxpayer's income over the past three years.

8           Then at the bottom of page 10 if a deferred  
9 annuity is taken on termination of service there are  
10 two options; either tax can be settled at the present  
11 value of the deferred annuity, or the annuity as  
12 received can be taxed. On page 11 the provision of  
13 the Income Tax Act is dealt with which facilitates  
14 employees moving from one job to another and avoiding  
15 payment on the value of their pension at the time of  
16 moving by having the equity transferred to another  
17 plan. At the bottom of page 11 we deal with death  
18 benefits, again from registered pension plans. The  
19 death benefit is fully taxed but there is the  
20 alternative of a lump sum relief on the basis of the  
21 last three years tax. The instalment settlement,  
22 however, is taxed in full.

23           Then we go to the provincial taxes as they  
24 relate to the personal field and point to the 16 per  
25 cent abatement allowed by the federal government.  
26 Then we review the special tax in Quebec which has  
27 enacted its own personal Income Tax Act, and point to  
28 the fact that this is, although in different language,  
29 modelled very closely as far as life insurance is  
30 concerned on the federal act.





1           Then we go over to page 14 where we refer to  
2   concessions to policyholders in their own personal  
3   income tax returns on individual contracts. We point  
4   out that there is no deduction for premiums for life  
5   insurance or annuity contracts except the registered  
6   kind. This point is of interest today, because later  
7   on in our other memorandum we have come to the  
8   discussion of this question of relief for life  
9   insurance premiums. Secondly, we refer to premiums  
10   under registered plans being deductible, and then the  
11   fact that under registered plans insurance can be  
12   combined with the savings element and the savings  
13   element will still qualify for deduction.

14           Then we come to the limits at the bottom of  
15   page 14 of the deduction for registered retirement  
16   savings plan contributions. At the top of page 15  
17   the limits are finished off. Then we refer to the  
18   individual's position in connection with group  
19   contracts and point out that payments made on behalf of  
20   an employee by an employer to provide group term  
21   life insurance up to \$25,000.00 are not considered  
22   income, but above that those contributions are  
23   considered as income to the individual.

24           Then we refer to the deduction of contributions  
25   to pension plans and give the limits there.

26           Then over the page to page 16, where we  
27   refer to the employer's right to get a deduction for  
28   special payment for past services. At the bottom of  
29   the page there is a little detail about the \$25,000.00  
30   provision relating to group insurance, which I mentioned







1 a moment ago, describing how it is done by arriving at  
2 the proportion of cost of the group term insurance.  
3 Here, incidentally, there was the other amendment made  
4 recently to the Income Tax Act where this is now  
5 confined to group term life insurance, this relief of  
6 \$25,000.00 insurance.

7 On page 17 we deal quite briefly with estate  
8 tax and point out that since the adoption of the Estate  
9 Tax Act by Parliament life insurance is treated like  
10 other forms of property liability, being based on  
11 ownership. We run down the sections which bring into  
12 tax a variety of things like annuities, superannuation,  
13 pensions, death benefits, and on page 18 give a little  
14 detail about the insurance provision. Then we refer  
15 to the "key-man" insurance, where it is owned by a  
16 corporation controlled by the deceased. At the bottom  
17 of the page we refer to a change in the Act a few  
18 years ago, bringing into tax an insurance policy taken  
19 out in connection with office or employment being  
20 taxable as a death benefit.

21 At the top of page 19 we point out that this  
22 is a matter which requires further study, that the  
23 section is not doing exactly what it was intended to  
24 do. In Section 3(5) we give the criteria for  
25 determining ownership in a life insurance policy,  
26 because ownership is the key. Ownership means the  
27 right to do one of five things: To change the beneficiary;  
28 to charge or pledge the policy; to borrow; to cancel,  
29 surrender or otherwise terminate the policy; or to  
30 assign the policy.





1           Then there are two brief paragraphs on  
2 provincial succession duties, the key point being that  
3 the provinces have not followed the federal Act in  
4 using the ownership test to tax the proceeds of life  
5 insurance policies on the life of the deceased to the  
6 extent that the deceased paid the premiums. This is  
7 true and has been true in Ontario and Quebec for many  
8 years, and it is also true in the new Act enacted in  
9 British Columbia last year.

10           Now, Mr. Chairman, do you wish me to go on  
11 to page 11?

12           THE CHAIRMAN: No, I think not if I may have  
13 a second choice. There is a good deal in the  
14 memorandum here and you have gone quite a distance  
15 already. It seems to me that it might be a good  
16 opportunity for you to relax for a minute or two while  
17 we ask a couple of questions. Mr. Coyne, supposing  
18 I leave you to take on from here?

19           MR. COYNE: All right, Mr. Chairman. Perhaps  
20 picking up some questions for clarification arising  
21 out of the factual memorandum which Mr. Tuck has just  
22 been reviewing, Mr. Tuck, if there are some aspects  
23 of these questions which you intend to deal with in  
24 the second part of your submission, you might indicate  
25 whether it would be preferable to defer them until that  
26 time.

27           Now, turning to the first memorandum, at the  
28 beginning where you set forth the provisions of the  
29 Income Tax Act providing for the taxation of life  
30 insurance corporations, you point out that it is in





1 effect a complete code for life insurance companies,  
2 and that the general provisions of the Act with respect  
3 to deduction and prohibited deductions in determining  
4 the taxable profits of ordinary corporations do not  
5 apply. This section for life insurance companies  
6 supercedes the general provisions of the Act.

7 Section 30 really determines the taxable  
8 income of life insurance companies having capital stock.  
9 Could you tell us very briefly the tax position of the  
10 mutual companies, which of course, by definition, do  
11 not have taxed capital stock?

12 MR. TUCK: They pay no tax under Section 5(1)  
13 of the Income Tax Act.

14 MR. COYNE: No tax at all because of the fact  
15 that there are no amounts credited to shareholders  
16 accounts?

17 MR. TUCK: That is right.

18 MR. COYNE: One of the things which strikes  
19 one from reading Section 30 in the context of the Income  
20 Tax Act is that unlike the case of other companies  
21 where there is a requirement for determining profits  
22 of the business of those companies on which the tax  
23 is based, section 30 is concerned with the taxable  
24 income of a life insurance corporation. Nowhere does  
25 it mention profits. I wonder whether you could very  
26 briefly go through these various factors which determine  
27 the taxable income of a life insurance company? This  
28 is sometimes a matter of some mystery to persons  
29 who are not in the life insurance business and  
30 concerned with their taxation.







1 THE CHAIRMAN: This seems to me, Mr. Coyne,  
2 a good starting place to ask why life insurance  
3 companies avoid use of the word "profits". I know  
4 they do avoid it because on some statements which I  
5 have seen the word "profits" does not appear.

6 MR. TUCK: I think this is an important part  
7 of our answer to some of the questions, Mr. Carter. We  
8 tend to analyze the life insurance process in this  
9 respect. If we may, could we come back to this?

10 THE CHAIRMAN: By all means.

11 MR. COYNE: Then a few matters of detail.  
12 Turning over to page 2 you cite the section from the  
13 Canadian and British Insurance Companies Act relating  
14 to the division of profits from participating policies.  
15 Subsection (2) provides that the holders of such  
16 policies are entitled to share in that portion of  
17 the profits set apart that has been distinguished  
18 as having been derived from participating policies,  
19 to the extent of -- and then there are a series of  
20 progressive amounts. The first one is 90 per cent  
21 in any year in which the mean participating fund  
22 does not exceed \$250 million, up to 97½ per cent where  
23 the mean participating fund exceeds \$1,000 million.  
24 I take it the balance, reversing the order from 2½ per  
25 cent to 10 per cent, may at the discretion of the  
26 company be attributed to shareholders accounts?

27 MR. TUCK: That is right.

28 MR. COYNE: My question is merely as to  
29 these very large amounts which are set forth in these  
30 sub-paragraphs. In terms of Canadian life insurance





1 companies as they exist, do they generally fall in (a)  
2 rather than (b), or in (c) or in (d), or are there  
3 companies which are in all of these varying sizes up to  
4 and including (d), where the mean participating fund  
5 exceeds \$1,000 million?

6 MR. TUCK: There were some in each category,  
7 until the Sun Life mutualized.

8 MR. ANDERSON: Perhaps I might be able to  
9 supply our own company's figures. As at the end of  
10 last year this particular fund you are talking about,  
11 the non-par fund, was \$700 million.

12 MR. TUCK: So that you fall into (c).

13 MR. COYNE: Mr. Anderson, is your company the  
14 largest non-mutual company in Canada?

15 MR. ANDERSON: I think that would depend on  
16 the use of the word.

17 MR. COYNE: Well, one of the largest.

18 MR. ANDERSON: Yes.

19 MR. COYNE: By the time you get up to 97½ per  
20 cent you will be one of the very large companies.

21 MR. TUCK: The Great West and the London are  
22 the two largest Canadian companies with capital stock,  
23 and they are in (c).

24 MR. A.M. CAMPBELL: The Sun Life until they  
25 mutualized was the only one.

26 COMMISSIONER WALLS: Does this not prejudice  
27 the dividend-paying ability of small or new companies?

28 MR. TUCK: It does limit the dividends that a  
29 new company can pay out of its participating funds. It  
30 does not limit what you can take from the shareholders





1 from its non-par funds if it feels that non-par funds  
2 are generating any earnings.

3 MR. A.M. CAMPBELL: I should like to point out  
4 that these percentages which may go to the shareholders  
5 account are optional. There is nothing to prevent a  
6 company in (a) from paying out only 2½ per cent to the  
7 shareholders account if they so desire.

8 MR. ANDERSON: That is the situation in our  
9 own case, Mr. Campbell. While we belong to category (c),  
10 95 per cent, actually last year we paid out 97 per cent.  
11 I think that is your point.

12 THE CHAIRMAN: You mean, paid out up to 100  
13 per cent, but you may not have less than 97 per cent.

14 MR. ANDERSON: That is right.

15 MR. TUCK: The amounts of the participating  
16 funds of the Canadian companies are all set out in the  
17 abstract of the Insurance Superintendent's Statement  
18 for 1962, at page 34A. This is all the Canadian  
19 companies registered in Ottawa.

20 MR. COYNE: Then if we might turn the page  
21 again to page 3, where you get into the aspects of tax  
22 credits both for provincial taxes and for foreign  
23 taxes, at the bottom of the page, dealing with  
24 provincial income tax, the taxable income earned in each  
25 province is the proportion of the total taxable income  
26 that the premiums, less dividends, in each province is  
27 of the total premium, less dividends, in all jurisdictions  
28 where the company maintains a permanent establishment.  
29 How is it determined whether a premium is received in  
30 a province?







1 MR. TUCK: "Premiums in each province" are the  
2 words.

3 MR. COYNE: Is it a matter of the residence  
4 of the policyholder or the address of the office through  
5 which the payments are made?

6 MR. TUCK: I believe this is so but my  
7 colleagues can correct me if I am wrong. There are  
8 exhibits in the federal statement and in the provincial  
9 insurance statement in which premiums are shown by  
10 profits, under various headings "Alberta, British  
11 Columbia", and so on. They are shown on the basis of  
12 the current residence of the policyholder.

13 MR. ANDERSON: That is right.

14 MR. COYNE: Is this the same test that is  
15 accepted by the provinces in connection with their  
16 taxation of the companies incomes?

17 MR. TUCK: Yes.

18 MR. COYNE: And the federal authorities also  
19 recognize this test for purposes of determining  
20 provincial tax credit.

21 MR. TUCK: That is correct.

22 MR. COYNE: At the top of page 4 you then get  
23 into the foreign tax credit, and I believe this is one  
24 of the matters you comment on in the memorandum, and  
25 perhaps you would prefer to leave it until that time.

26 MR. TUCK: Yes, we would.

27 MR. COYNE: On page 4, under the heading  
28 "Provincial Income Tax", you point out that all  
29 provinces now have provincial income tax and that  
30 the provinces accept the principles set out in the





1 federal act. Then you say:

2 "While the method of  
3 calculating provincial income  
4 taxes may vary somewhat as  
5 between individual provinces..."

6 I am a little curious as to the meaning of that and  
7 whether these variations are of any significance.

8 MR. TUCK: Do you know, Mr. Anderson, whether  
9 they are of significance?

10 MR. ANDERSON: No, I do not think they are  
11 significant.

12 MR. COYNE: Is it fair to say that by and  
13 large, without any significant variations, all of the  
14 provinces now tax life insurance companies, basically  
15 in the same way and in a way consistent with the  
16 federal method of taxation?

17 MR. TUCK: I think so.

18 MR. COYNE: On page 5 you get into the  
19 premium tax, and perhaps we might deal with this in  
20 the later memorandum.

21 MR. TUCK: Yes, we deal with it there.

22 MR. COYNE: I want to ask a general question  
23 rather like the question I just asked with respect to  
24 income tax. By and large do all the provinces agree  
25 or have the same method of determining the basis of  
26 tax on premiums so that there is no double taxation  
27 as between one province and another?

28 MR. TUCK: That is correct, Mr. Coyne.

29 MR. COYNE: Again turning the page to page 6,  
30 where you get into the subject of income tax on policy





1 proceeds ---

2 THE CHAIRMAN: Would this be a good time to  
3 ask a question concerning the taxation of the company  
4 itself?

5 MR. COYNE: I think it would, Mr. Chairman.

6 THE CHAIRMAN: Because I want to be sure that  
7 I fully understand how life insurance companies are  
8 taxed. I am not up-to-date on it myself, although I  
9 think I know the answer. I should like to ask what is  
10 no doubt an obvious question to you gentlemen, but it  
11 is not obvious to me. The income accounts of a life  
12 insurance company starts with the premium. You have  
13 the premium, then there are deducted expenses, and then  
14 there are deducted actuarial reserves, and then  
15 deductions are made under Section 30. The amount is  
16 charged during the year to the shareholders as their  
17 fair proportion of losses incurred by investment, or  
18 other losses of a similar character. They are charged  
19 during the year to the shareholders, obviously not to  
20 each individual shareholder but to the shareholder's  
21 account. I presume it is to the account, which would  
22 contain the profits attributable to the shareholders.  
23 Is that what the words mean there, "To the shareholders"?

24 MR. A.M. CAMPBELL: To the shareholders  
25 account.

26 THE CHAIRMAN: It is a surplus account. It is  
27 a general account.

28 MR. HOLMES: Not a surplus. It is a  
29 shareholders account.

30 THE CHAIRMAN: A shareholders account means







1 to me a personal account. At the top of the page would  
2 appear the words "John Jones", who lives in a certain  
3 town at a certain address. I do not think you intend  
4 that here, do you?

5 MR. ADAMS: Probably the word "fund" should  
6 be inserted. It should be "shareholders fund". That is  
7 what it is normally called, as a matter of fact.

8 THE CHAIRMAN: Very well. I do not think there  
9 is any other industry which has an account labelled  
10 "shareholders fund". I think this is peculiar to the  
11 life insurance business.

12 With regard to any losses which are made  
13 through investments or otherwise, would not all the  
14 losses pertain to the owners of the business, who are  
15 the shareholders, or is there an allocation of losses  
16 between policyholders and shareholders?

17 MR. A.M. CAMPBELL: Supposing you have a company  
18 with \$500 million assets in funds exclusive of the  
19 shareholders fund, and you have \$1 million in the  
20 shareholders fund. If you have profits or losses  
21 they are apportioned in that ratio.

22 MR. ADAMS: There is no segregation of  
23 assets so it has to be apportioned.

24 COMMISSIONER GRANT: Let us suppose that a  
25 company is starting off business. From its very  
26 inception how is the shareholders fund established.  
27 What makes it grow and what takes away from it? I  
28 see that the losses take away from it, but what makes  
29 it grow?

30 MR. HOLMES: Well, let me just start on this





1 and my friends can add to it. It starts off, I would  
2 say, with the capital stock investment. There may be  
3 a premium added to it, but it does represent originally  
4 the money which the shareholders contribute to the  
5 operation. It is a fund. Let us say, just to  
6 illustrate, that it was a large company with \$1 million.

7 COMMISSIONER GRANT: You mean paid in capital?

8 MR. HOLMES: Yes. Some interest is earned  
9 in the first year. The other main source of growth has  
10 been referred to, which is out of limited transfers of  
11 the ---

12 COMMISSIONER GRANT: Non-participating account.

13 MR. HOLMES: Non-participating account, and  
14 then the limited transfers from the participating  
15 profits. They are the main sources of its growth.

16 COMMISSIONER GRANT: Mr. Holmes, when a  
17 certain amount is credited to the shareholders account  
18 from participating, that is not in the form of a  
19 dividend that is actually paid on those shares?

20 MR. HOLMES: Oh no. All dividends must be  
21 paid out of the shareholders account to shareholders,  
22 but the money that is put into the shareholders  
23 account may sit there to their credit. It is normally  
24 a typical shareholders fund which does enlarge the  
25 capital stock with some kind of surplus which has been  
26 added to it from the past year's operation.

27 COMMISSIONER GRANT: Some years ago I  
28 remember attending a meeting in New York which was  
29 addressed by some person who was supposed to be an  
30 expert on stocks, and so on. He said that Canadian life





1 insurance companies shares are undervalued. He said  
2 that people do not understand them, that they do not  
3 appreciate what the real value of those shares is. Might  
4 he be referring to the shareholders fund which would  
5 actually increase the book value of the shares?

6 MR. ADAMS: If I may answer that briefly, there  
7 has for some years been a considerable misunderstanding  
8 of the comparison between the Canadian stock life  
9 insurance company and the United States stock life  
10 insurance company. Investment dealers and others just  
11 do not realize the implication of these limitations  
12 which are spelled out on page 2 and which are not  
13 found in the United States insurance laws. I think  
14 this is basically the reason for the opinion that many  
15 people in the United States think that Canadian  
16 shares are undervalued. They are trying to treat them  
17 as United States money.

18 THE CHAIRMAN: The next section is 30(b),  
19 "Amounts transferred in the year from the shareholders  
20 account to an insurance fund or an investment reserve  
21 fund". We have already had the investment losses  
22 written off under (a). Now we have monies taken  
23 out of this account for two purposes. I would imagine  
24 that there is some objective in mind there. Would  
25 that be determined subject to the scrutiny of the  
26 Superintendent of Insurance, or anything like that.

27 MR. TUCK: This transfer occurs when it is  
28 necessary for the directors to bolster the insurance  
29 operation, I suppose, by drawing on the shareholders.  
30 The insurance mortality might be bad.









1 THE CHAIRMAN: Actually they compute the  
2 additional reserve which is required. Is that what is  
3 meant in the first part of it?

4 MR. TUCK: That would be one thing where the  
5 insurance fund is declared by the actuary to be  
6 inadequate.

7 THE CHAIRMAN: How about the investment  
8 reserve? That is not an actuarial calculation; that is  
9 a subjective judgment, I should have thought.

10 MR. ADAMS: If there was a substantial drop in  
11 market values and they had to be bolstered, this is  
12 the shareholders' responsibility.

13 THE CHAIRMAN: Then (c) is "in a case where an  
14 amount equal to dividends or portions or dividends  
15 would be deductible under Section 28, if that section  
16 were applicable, such proportion of the amount credited  
17 or appropriated as aforesaid as may reasonably be  
18 regarded as having been derived from those dividends  
19 or portions of dividends".

20 MR. TUCK: These are dividends otherwise  
21 deductible, I think.

22 THE CHAIRMAN: Yes, I think so. Then I think  
23 that is all I want from that particular section, Mr.  
24 Coyne.

25 COMMISSIONER WALLS: Just one question. I  
26 was interested in the section where you say "such  
27 proportion of the amount credited or appropriated" to  
28 the shareholders account. Then you deal with capital  
29 gain on investments. Is there any portion of the net  
30 capital gain which goes to the participating policy-





holder, or is it ear-marked for the shareholders entirely?

MR. A.M. CAMPBELL: It is apportioned on the basis of the funds.

MR. ADAMS: The same as the losses.

MR. A.M. CAMPBELL: So the majority goes to the policyholder funds.

COMMISSIONER WALLS: It is apportioned, is it?

MR. A.M. CAMPBELL: Yes.

COMMISSIONER WALLS: Thank you.

MR. COYNE: Then if we could turn to page 6, where you are commencing to deal with income tax on policy proceeds, first of all death claims, you deal with a lump sum, you point out that that is clearly a capital receipt and it is not subject to income tax. Then with regard to instalment settlements you say:

"Where the proceeds of a policy are payable on the instalment basis, by virtue of some settlement option, then the interest portion of such instalments will be subject to income tax".

Over the page you point out that the combined effect of section 6(1)(a)(iii) of the Income Tax Act, read in conjunction with section 11(1)(k) is that only the interest portion of annuity payments is taxable. Am I right in thinking that as far as the taxable interest portion of instalment annuities is concerned, it is only the interest that is earned after the





1 annuity has commenced which is taxable, not the interest  
2 which has been earned in building up the value out of  
3 which the annuity is paid?

4 MR. TUCK: You are correct, subject to two  
5 exceptions. One mentioned earlier ---

6 MR. COYNE: I am speaking before June 13, 1963,  
7 I should say.

8 MR. TUCK: That is one exception you have made.  
9 The other exception is, the rule you cite refers to an  
10 individual annuity contract which is not registered.

11 MR. COYNE: Quite so.

12 MR. TUCK: Not registered as a retirement  
13 savings plan or pension plan.

14 MR. COYNE: Quite so. However, I thought in  
15 this section that we are dealing with individual ---

16 MR. TUCK: I think really, Mr. Coyne, that  
17 this is a life insurance settlement, where a man dies  
18 with \$10,000.00 worth of life insurance which then  
19 becomes payable. Instead of taking that \$10,000.00 his  
20 beneficiary takes an instalment settlement, an  
21 annuity settlement of the \$10,000.00, so that it is a  
22 prospective annuity settlement only. There is no  
23 deferred period. As you put your question, I rather  
24 thought that it was more in relation to annuities on  
25 page 7, individual annuities, at the bottom of page  
26 7, where the interest only is taxed. At the top of  
27 page 8 we refer to surrenders.

28 --

29 --

30 --







1 MR. COYNE: Is there basically any difference  
2 between the taxing of the instalment settlements that  
3 you are speaking of on page 6, and the taxing of the  
4 annuity payments you are speaking of on page 7?

5 MR. TUCK: There is no difference in this  
6 sense. Subject, again, to those exceptions I made, they  
7 are both taxed on the interest element from a point of  
8 time for it, from the commencement of the annuity for  
9 it. But in the instalment settlements of life insurance  
10 proceeds, of course, there is not a deferred period.  
11 The man dies a day, or a week, or ten years after he  
12 takes out the policy. There is not a deferred period  
13 such as there is in the individual annuity. But as  
14 from the point forward where the annuity commenced,  
15 the formula is exactly the same.

16 MR. COYNE: You say, with regard to lump sum,  
17 that the amount received is clearly a capital receipt;  
18 it is viewed by the Income Tax Act as a capital receipt  
19 and no portion of that is taxable.

20 MR. TUCK: That is not mentioned in the Act  
21 at all. It is not mentioned as a taxable item either.  
22 It is just not one of those things laid out in taxable  
23 income.

24 COMMISSIONER GRANT: Is not the reason for  
25 this that under an approved pension plan or a  
26 retirement savings plan the payments are allowed as a  
27 deduction from income tax?

28 MR. TUCK: That is right.

29 COMMISSIONER GRANT: And therefore are taxed  
30 on their receipt as an annuity?





1 MR. TUCK: That is right.

2 COMMISSIONER GRANT: Whereas an annuity which  
3 is not under a retirement savings plan or an approved  
4 plan is a voluntary act on the part of the annuitant  
5 and he makes these payments out of capital and therefore  
6 it is only the interest portion that is subject to tax  
7 when it is received?

8 MR. TUCK: Yes, it is the interest portion  
9 that is taxed from the time he starts getting the annuity.

10 COMMISSIONER GRANT: Because there is no  
11 limitation on the amount he can put in?

12 MR. TUCK: No. There is a clear line between  
13 those two.

14 MR. COYNE: But I suppose the point is that no  
15 tax is charged to the policyholder during a period in  
16 which his premiums are earning interest in building up  
17 to the ultimate capital sum proceeds?

18 MR. TUCK: That is right, and this whole thing  
19 we come to later on.

20 MR. A.M. CAMPBELL: Except, of course, there  
21 are the proceeds by insurance policies and there is a  
22 premium tax during this period.

23 MR. COYNE: Quite so; a premium tax payable  
24 by the company?

25 MR. A.M. CAMPBELL: Yes.

26 MR. COYNE: Then on page 7 where you are  
27 dealing with policy dividends, you point out that  
28 policy dividends are included in the word "proceeds".  
29 Then you say:

30 "The theory behind the





1 exemption, in the case of  
2 insurance dividends, is that  
3 the policyholder is simply  
4 having returned to him that  
5 portion of his premium which  
6 the current year's experience  
7 has shown to be unnecessary".

8 Am I right in thinking that if the policy-  
9 holder leaves his dividends on deposit with the company,  
10 as he normally can under many participating schemes,  
11 the interest that the dividend fund of his earns is  
12 not taxable in his hands?

13 MR. TUCK: It is taxable income.

14 MR. COYNE: In the hands of the policyholder?

15 MR. TUCK: Yes.

16 MR. COYNE: Declarable and taxable in the  
17 year in which it is earned?

18 MR. TUCK: Yes. I am not sure that very  
19 many report interest on anything that is taxable  
20 income.

21 MR. COYNE: But that is subject to tax?

22 MR. TUCK: Yes.

23 THE CHAIRMAN: Do you notify your policyholders  
24 of that? It seems to me I must be accumulating  
25 interest on some policies and I have never been  
26 conscious of any dereliction with regard to reporting  
27 interest, and I guess I have been derelict in this  
28 respect. Would my premium notices have indicated it?

29 MR. TUCK: No. It is a bit of anomaly.  
30 The section of the Act and the regulations dealing with







1 reporting interest simply do not extend to this type of  
2 payment. They do extend to interest in your bank  
3 account, and there is a reporting of over \$100.00. If  
4 you have enough bank accounts and keep your interest  
5 under \$100.00, you are in the same position as you are  
6 with your life insurance interest.

7 MR. A.M. CAMPBELL: The dividend note is  
8 ordinarily the means. If your dividend is in deposit,  
9 it would show the interest on existing dividends.

10 MR. TUCK: I am sorry; you are quite right.

11 THE CHAIRMAN: My question was, would it  
12 indicate that this is taxable? I do not suppose so.  
13 It is not your business to do so; it is the policy-  
14 holders business to know whether it is taxable or not.  
15 I suppose it has been indicated to me and I did not pick  
16 up the fact that it was taxable.

17 COMMISSIONER GRANT: I am sorry that this  
18 perilous matter came up at all.

19 COMMISSIONER WALLS: Are most dividends not  
20 deductible by the policyholder from his next year's  
21 premium? Is that not the customary method of handling  
22 it?

23 MR. A.M. CAMPBELL: In a substantial number  
24 of cases it is used.

25 MR. TUCK: It is the favourite method, I  
26 guess.

27 COMMISSIONER WALLS: Being much poorer than  
28 Mr. Carter, that is the way I always employed my dividends.

29 THE CHAIRMAN: You have probably figured out  
30 an angle.





1 MR. COYNE: In a number of places, Mr. Tuck,  
2 you refer to the special treatment of lump sum payments  
3 under Section 36 of the Income Tax Act, and also to a  
4 number of circumstances in which that type of special  
5 treatment on lump sums is not available.

6 Do you take any position or make any comments  
7 or recommendations as to the extension of Section 36 to  
8 any other circumstances? I have in mind, for example,  
9 your reference at the bottom of page 8 with regard to  
10 surrenders on de-registration of retirement savings  
11 plans, and death benefits received under Section 79B(3)(c).

12 I think neither of those are subject to the  
13 special tax treatment under Section 36.

14 MR. TUCK: If my memory is correct, at the  
15 time Section 79B was enacted I think we proposed that  
16 Section 36 be made available. If it is not, I guess  
17 we had better review our recommendations.

18 MR. COYNE: You are not making any submissions  
19 to this effect to this Commission, though?

20 MR. TUCK: No, we have not looked into that.  
21 Perhaps we should. We could very easily do it and drop  
22 you a line.

23 MR. COYNE: It is a point that has been  
24 raised by some others who have made representations to  
25 the Commission, that Section 36 of course chooses  
26 certain types of lump sum payments, and the question  
27 has been raised as to whether or not there are others  
28 which should, in equity, receive similar treatment.

29 MR. TUCK: We will write you on that, Mr.  
30 Coyne.





1 MR. COYNE: Turning now to page 14 where you  
2 are dealing with concessions to policyholders in  
3 personal income tax returns, individual contracts,  
4 deductibility or allowance of life insurance premiums,  
5 no tax unless they are registered; and then you say:

6 "Conversely the resulting  
7 death, surrender or maturity benefits  
8 are regarded as capital and so free  
9 from income tax".

10 Does that last statement strictly apply in  
11 the case of benefits which are paid out in the form of  
12 an annuity?

13 MR. TUCK: No, it does not, in respect of  
14 the interest content of the annuity from the vesting  
15 date for it.

16 MR. COYNE: We are back to the same point  
17 that we were discussing earlier?

18 MR. TUCK: Yes. The value of the annuity at  
19 the time of payment is free.

20 MR. COYNE: Yes, and I think the distinction  
21 is clear. On page 16 you make reference to this  
22 rather special arrangement with regard to the exclusion  
23 of group term insurance premiums paid by an employer  
24 from the income of the employee.

25 We have had some criticism of the manner in  
26 which the proportioning is effected, where some portion  
27 of the premiums is paid by the employee under Section  
28 6(1)(d)(b)(3), I think it is. Do you have any  
29 criticisms of the manner in which this proportioning  
30 works out? Is it the cause of any concern for you







1 at all?

2 MR. TUCK: I have not heard of any. The  
3 whole section bothers us in this respect, that it is an  
4 awful lot of words and an awful lot of work for a  
5 very little bit of tax. I think that has been our main  
6 concern with it.

7 MR. ADAMS: I think our general feeling has  
8 been that the cost of administering this is in excess of  
9 any tax collected.

10 MR. TUCK: As to the detailed formula, I do not  
11 think we have any suggestion.

12 MR. A.M. CAMPBELL: We had the opportunity to  
13 discuss this with the then Minister of Finance, and this  
14 was the proposal that the companies put forward; they  
15 felt that the group insurance position here could be more  
16 liberal.

17 THE CHAIRMAN: You do not remember whether  
18 you recommended any limit whatever?

19 MR. AM. CAMPBELL: We suggested two times  
20 salary being free of tax.

21 COMMISSIONER PERRY: I think the previous  
22 point we had put before us was that the limit should be  
23 based on the part of the insurance that was being  
24 provided by the employer; not the total amount of the  
25 insurance. In other words, the employer may only be  
26 paying for half of the \$25,000.00, and that the limit  
27 should reflect the employer's part, which is the  
28 benefit, rather than the total amount.

29 MR. TUCK: You have a good point, Mr. Perry.

30 COMMISSIONER PERRY: But it is not made by the





1 insurance companies?

2 MR. TUCK: In my own case, sir, I think I can  
3 say, in the presence of those who pay my salary, that I  
4 think I pay very much more than half the cost of my  
5 group insurance, to get the \$25,000.00.

6 COMMISSIONER GRANT: There is a ceiling, is  
7 there not, on group insurance? What is the maximum  
8 coverage? It varies from company to company, but what  
9 is the maximum today that any company is giving under a  
10 group policy?

11 MR. ADAMS: Do you mean what any life  
12 insurance company is selling, or any employer is providing  
13 for his employees?

14 COMMISSIONER GRANT: What is the maximum  
15 coverage an employee can get under a group policy,  
16 regardless of salary? Would there not be a ceiling?

17 COMMISSIONER PERRY: Is not twice salary the  
18 normal thing?

19 MR. ADAMS: Twice salary is normal.

20 MR. A.M. CAMPBELL: In the upper limits I  
21 think there is a limit on twice salary. Anything in  
22 excess of \$100,000.00, I would think, would be  
23 relatively rare, although there may be individual cases  
24 where that does exist.

25 MR. ADAMS: This is kept in check by the  
26 mortality risk involved, and the underwriters in Canada  
27 are careful when you get into that category,  
28 because this involves medical examination and so on. So  
29 that is the effective limiting factor, depending on the  
30 size of the insurance company involved and the extent





1 to which they can underwrite large amounts.

2 COMMISSIONER WALLS: Do you do any re-insurance  
3 of group insurance?

4 MR. ADAMS: Yes, occasionally.

5 COMMISSIONER WALLS: So the smaller company  
6 would have that opportunity, perhaps, to take a slightly  
7 bigger risk through re-insurance?

8 MR. ADAMS: Yes.

9 MR. COYNE: Turning, if I may, to just one  
10 point on the section at the end dealing with the Estate  
11 Tax Act, you point out at the bottom of page 18 certain  
12 anomalies which can flow from the application of  
13 Section 3(4b) and it has been put to us by others that  
14 this section is far too broad in its wording. It was  
15 designed to cure a relatively small loophole and in the  
16 result has inhibited or affected unfairly many  
17 transactions that were outside that concept.

18 I take it you are referring to this same thing  
19 here?

20 MR. TUCK: Yes.

21 MR. COYNE: My question is whether you have  
22 any specific recommendations to make as to how it might  
23 be reworded?

24 MR. TUCK: No. We have tried hard to find  
25 one over the last few years and have failed. Any time  
26 we thought we were getting towards a solution, somebody  
27 in the Tax Department was able to shoot it down. It is  
28 a very difficult matter. We are going to try again, but  
29 at the moment we have no solution to offer.

30 MR. COYNE: Thank you. Mr. Chairman, those are







1 my questions on this preliminary memorandum.

2 THE CHAIRMAN: You have a few pages of the  
3 other memorandum, have you not?

4 MR. COYNE: I wonder, Mr. Chairman, if I could  
5 ask one question really on the first page of these  
6 notes which Mr. Tuck started out to refer to.

7 In the third paragraph you say:

8 "Canadian life insurance  
9 companies with capital stock have  
10 always transacted a substantial  
11 portion of their business on the  
12 participating basis".

13 Are you trying to distinguish there between  
14 Canadian life insurance companies with capital stock  
15 and mutual companies?

16 MR. TUCK: No; non-resident life insurance  
17 companies.

18 MR. ADAMS: This is rather unique to Canada.  
19 In our jurisdictions there is the stock company which  
20 sells nothing but non-participating insurance. This is  
21 a unique Canadian development.

22 MR. COYNE: In Canada, though, both the  
23 capital stock companies and the mutual companies sell  
24 participating policies?

25 MR. ADAMS: Yes. This goes back to 1847,  
26 incidentally, when Canada Life was founded. They were  
27 refused a charter as a public company, and this started  
28 them off on a new tack.

29 THE CHAIRMAN: I take it that Mutual Insurance  
30 Company policies are not participating?





1 MR. ADAMS: Not all, but most are.

2 MR. A.M. CAMPBELL: The reason for that  
3 principle is that term insurance does not really lend  
4 itself very readily to participation.

5 THE CHAIRMAN: You have finished, Mr. Coyne?

6 MR. COYNE: Yes, Mr. Chairman.

7 MR. TUCK: May I go back to the notes, Mr.  
8 Chairman? The part of the notes that stretches from  
9 page 3 to the breaking point that you suggested on  
10 page 11 is pretty much of a piece. We would be glad  
11 to answer questions as we go through it.

12 THE CHAIRMAN: I think it would be better if  
13 you went right through it, and if we have any questions  
14 we will make a note of them and come back to them.

15 MR. TUCK: In the middle of page 3 there is  
16 the heading "General Comments on Research Staff's  
17 Questions". We would like to stress that these next  
18 few pages, while they contain statements on numerous  
19 matters with which I am sure you are all familiar, do  
20 form as a whole a background for our subsequent comments  
21 on the questions and we deem these pages to be of some  
22 significance.

23 First of all, we wish to emphasize the unique  
24 nature of the life insurance business. Contracts  
25 entered into today may run for many decades and no one  
26 can foresee the contingencies that may arise in a long  
27 span of years. During all this time the premiums and  
28 guarantees originally fixed remain in effect. It is  
29 therefore difficult, if not impossible, to compare a  
30 life insurance company with the other organizations





1 referred to in the questions put to us.

2 The questions all relate, in one way or another,  
3 to the taxation of the life insurance companies  
4 themselves -- the federal income tax imposed on transfers  
5 to shareholders' account and the premium tax levied by  
6 the provinces. We should like to make general comments  
7 on these taxes before proceeding to the specific  
8 questions. Then we would like to state our basic  
9 thesis here.

10 It is our belief that these two taxes, taken  
11 together, constitute a workable and equitable basis for  
12 the taxation of life insurance companies -- bearing in  
13 mind the type of business transacted -- and that they  
14 represent a fair share of the general taxation burden for  
15 the companies and their policyholders to bear. To  
16 support this belief, we wish to emphasize the following  
17 points:

- 18 1) Provincial and federal taxes on life  
19 insurance must be looked at together.
- 20 2) Life insurance benefit payments relieve  
21 governments of many welfare expenditures  
22 they would otherwise be required to make.
- 23 3) The shareholder interest in the business  
24 is taxed at normal corporate rates.
- 25 4) The tax that applies to the policyholder  
26 interest (that is, the premium tax)  
27 takes into account the mutual nature of  
28 our business.
- 29 5) The premium tax falls equitably on the  
30 various types of life insurers.







6) The premium tax produces about three-quarters of the revenue that would be produced by a tax on the investment earnings of the life insurance funds of the companies at the average effective rate of personal income tax applicable to policyholders.

Taking these points in turn our comments are as follows:

1) Provincial and federal taxes must be looked at together. At the time the federal government entered the corporate tax field in 1917 the provinces had been levying a premium tax on life insurance companies for many years.

I think the first one was in the 1870's, the next one in the 1890's, and they followed along not long afterwards in other provinces. Double taxation of the life insurance business was avoided when the federal government entered the taxation field in 1917 by the federal government taxing only transfers to shareholders, leaving the basic tax on the business in the hands of the provinces. The premium tax field was rented to the federal government from 1942 until 1947.

From that year until 1957 there was double occupancy of this tax field by the federal government and some provinces but no double taxation. The tax was then transferred to the





1 provinces but if this had not been  
2 done no doubt some equivalent transfer  
3 of revenue from the federal treasury  
4 would have been made.

5 2) Life insurance and annuity payments to  
6 Canadians last year totalled \$710 million.  
7 Many recipients of these payments would  
8 otherwise have had to draw assistance from  
9 one level of government or another.  
10 We are not contending that this "social  
11 usefulness" should free us from tax  
12 entirely but we do suggest it should be  
13 taken into account in judging the tax  
14 burden to be imposed on Canadians who  
15 voluntarily assume responsibility for  
16 their families, their dependents and  
17 their own old age.

18 I would like to interject, if I may, in  
19 referring to this "social usefulness" point, that  
20 numerous other jurisdictions have taken a step that  
21 Canadian has never taken; and that is, have given  
22 positive incentives to people to take out life  
23 insurance by giving them relief from their personal  
24 income tax. We could give you a number of quotes,  
25 but here is one interesting one from the evidence of,  
26 I think it was the Inspector of Income Tax to the  
27 Royal Commission on Income Tax in Great Britain in  
28 1920:

29 "It is believed that it  
30 is the almost general view that





1 life assurance, among those classes  
2 who cannot otherwise safeguard their  
3 families in the event of early death,  
4 is an important national benefit.  
5 It certainly prevents innumerable  
6 cases of widows and children becoming  
7 a charge on the State to their own  
8 great disadvantage, as well as to  
9 the cost of other citizens. On  
10 this groun alone it deserves every  
11 possible encouragement; and it is  
12 not surprising that the unique  
13 national results of life assurance,  
14 and the method by which it is  
15 ordinarily provided by fixed  
16 annual payments maintained throughout  
17 a long period of years, should have  
18 singled out life assurance premiums,  
19 even from amongst certain other  
20 kinds of expenditure that may also  
21 be held to have good national  
22 results, as payments suitable to  
23 take into account to reduce the  
24 taxable income of those who pay  
25 them".

26 I continue, Mr. Chairman.

27 3) The amounts credited to shareholders'  
28 account by a Canadian life insurance  
29 company are taxed at normal corporate  
30 rates and no exception is taken to this.







4)

The tax that applies to the policyholder interest in our business is the premium tax. No doubt when it was first levied in Canada little attempt was made to establish a sound rationale for it. In fact one could argue rather effectively that such a tax is basically an unsound tax because:

(a) Life insurance companies are

largely mutual in character and a tax on them is borne almost entirely by their policyholders;

(b) a tax on the premiums paid by

these policyholders is a tax on thrift and self-reliance which are the last things that should be discouraged through taxation; in fact, many countries, as I have said, provide tax incentives.

(c) life insurance is the outstanding medium used by Canadians who seek to provide against the dependency of their families on state or other assistance and because the burdens of governments are thereby reduced, the policyholders should not be penalized by taxation; and

(d) a premium tax must be paid whether the insurance operation has been successful or not.





1           Despite these points, the premium tax is  
2 probably here to stay and as a method of taxation it  
3 does have some good features.

4           Years ago a line of legal decisions began in  
5 England that established the proposition that a life  
6 insurance operation is mutual in nature and that  
7 individuals banded together to insure themselves cannot  
8 be said to be trading for a profit. As far as a tax  
9 applying to the "profits" of a business is concerned, this  
10 line of cases would still appear to govern but the  
11 legislatures have come to the rescue of the revenue. In  
12 the premium tax statutes the legislatures have, in our  
13 view, taken account of the basic nature of our business.  
14 This did not happen overnight. The first premium tax  
15 statutes contained inequities but over the years  
16 adjustments have been made.

17           I thought I might at this point give you a  
18 reference. Perhaps Mr. Coyne already has these cases.  
19 They are all summarized quite usefully in the Stanley  
20 Mutual Case, which was about 1953, in the Supreme Court.  
21 They start away back with the New York Life Case in  
22 the House of Lords before the turn of the century.

23           All insurance is mutual in the sense used in  
24 some of the legal decisions because policyholders share  
25 risks of future loss. But in the context in which we  
26 are using it, "mutual" is the designation we apply to  
27 the policyholder interest in a life insurance company as  
28 distinct from the shareholder interest. In our business  
29 the line between policyholder interest and shareholder  
30 interest is quite clear because in our accounting and in





1 our statements policyholders' funds and shareholders'  
2 funds are clearly separated.

3 The essence of mutuality in life insurance is  
4 that A, B and C and like-minded individuals join  
5 together for a purpose that is personal to each but  
6 which is beyond the capability of any one of them to  
7 accomplish alone. As the cases say, these individuals are  
8 not "trading", and can hardly be held to be making a  
9 "profit" out of their own efforts. In choosing an  
10 insurance corporation as the vehicle for banding  
11 together, A.B and C become involved in a business  
12 operation which, it seems to be generally recognized  
13 in Canada, should bear some tax burden. The good  
14 features of the premium tax as the tax burden are its  
15 administrative simplicity, for the tax authorities and  
16 for the companies, and its even impact on the cost of  
17 insurance for both participating and non-participating  
18 policyholders.

19 5) The premium tax falls equitably on the  
20 various types of life insurers. We think the Commission  
21 will agree with us that it is unusual for a group of  
22 competitors in such diverse positions to agree that  
23 any tax system does even-handed justice to all of them.  
24 The stock companies do not object to paying a tax not  
25 levied on the mutuals -- the income tax on shareholders'  
26 account. All the companies, stock and mutual, Canadian  
27 and non-Canadian, agree that there is no competitive  
28 advantage to any of them in the premium tax since it  
29 falls equitably on both participating and non-  
30 participating business.







6) While it must always be gratifying to the tax authorities to find that competitors in the same line of business are satisfied with a tax base, the level of taxation is a legitimate area for enquiry. Here again, it is our contention that the premium tax, at its present 2 per cent rate, is defensible and we point in particular to the fact that it produces about three-quarters as much revenue as would be produced by a tax on the investment earnings of life insurance policy reserves at the effective rate of personal income tax applicable to policyholders. In 1962 the personal income of Canadians was \$30.8 billion and they paid \$2.3 billion in personal income taxes in that year. This works out at an average effective rate of personal income tax of about 7.5 per cent. If this rate of tax has been applied to the investment earnings on life insurance policy reserves in 1962, the tax produced would have been about \$19 $\frac{1}{4}$  million. The premium tax on life insurance in Canada in that year was \$14 $\frac{1}{4}$  million. Bearing in mind the "social usefulness" of the life insurance business, together with the fact that the business pays the following additional taxes over and above general taxes such as real estate, business and sales taxes, the difference between revenues generated by a premium tax and a tax on interest earnings does not loom large:

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1 Income taxes on transfers to shareholders'  
2 accounts..... \$2,000,000  
3 Fees and assessments to reimburse governments  
4 for the cost of insurance supervision..... 800,000  
5 Income tax on interest, etc., earned by  
6 non-resident life insurance companies doing  
7 business in Canada in respect of investments  
8 in Canada on behalf of non-Canadian  
9 policyholders..... 7,500,000  
10 As I say, these are approximate figures for taxes paid  
11 in 1962.

12 It might be argued that the companies have  
13 policyholders in high income brackets and for them the  
14 absence of an income tax on investment earnings of  
15 life funds is far more significant than the presence  
16 of the premium tax. This is undoubtedly true. If our  
17 business was concentrated with policyholders in high  
18 income brackets there might be cause for concern. But  
19 the facts speak for themselves. We have 10 million  
20 policyholders in Canada and if everyone filing taxable  
21 returns for incomes of \$10,000.00 a year and over was  
22 a policyholder this would only represent 3 per cent of  
23 the lives we insure.

24 Over the years we have had a number of  
25 discussions with government officials regarding the use  
26 of life insurance as a tax-haven. Two surveys have been  
27 made of the number of cases of large prepaid premium  
28 deposits and large single premium contracts. In neither  
29 was there any indication of any substantial use of  
30 life insurance in large amounts for tax reasons.





1           The life insurance business provides an  
2 important part of domestic capital. The companies'  
3 investment in government, housing, commerce and industry  
4 in Canada now exceeds \$10 billion. This total  
5 represents the accumulation of the methodical, small-  
6 scale savings of millions of policyholders. Much of this  
7 saving would not have been available for investment in  
8 the Canadian economy had it not been for the activity of  
9 life underwriters who now number more than 14,000 --  
10 probably the largest organized sales group in the savings  
11 field.

12           In our view the chief competition for the  
13 savings dollar comes not from other savings media but  
14 from consumer goods. Any increase in taxation of the  
15 life insurance business would raise the cost of insurance  
16 and discourage some purchases. A great part of the  
17 amounts not saved through the companies in consequence  
18 of this would likely be spent rather than saved in other  
19 ways. The result would be some overall reduction in  
20 available domestic capital.

21           The special contribution of life insurance to  
22 the community has been recognized in other jurisdictions  
23 by the granting of income tax relief to individuals for  
24 their life insurance premiums. In the United Kingdom,  
25 for instance, this relief goes far beyond the tax  
26 postponement granted in Canada for contributions to  
27 registered pension and retirement savings plans. The  
28 U.K. Royal Commission on the Taxation of Profits and  
29 Income in 1955 commented on this relief as follows.  
30 This is a later Commission, and this is what they







1 actually said:

2 "Life insurance relief has  
3 existed for over 100 years. It covers  
4 not only the premiums on assurances  
5 effected through the ordinary life  
6 offices but also the smaller weekly  
7 or monthly sums collected through  
8 industrial life assurance. It covers  
9 premiums paid to secure certain  
10 deferred annuities in connection  
11 with staff assurance schemes and  
12 premiums paid under endowment policies  
13 if they are combined with life cover.  
14 In effect, the relief is available  
15 to any taxpayer who wishes to take  
16 advantage of it and who has an  
17 insurable life. Its pros and cons  
18 were fully reviewed by the 1920  
19 Commission, who approved 'the action  
20 of the State in singling out this one  
21 form of thrift for preferential  
22 treatment'. Subject to certain  
23 recommendations that they made, they  
24 approved its continuance. More  
25 recently, the second Tucker Committee  
26 continued this approval, subject to  
27 certain modifications that were  
28 necessitated by other recommendations  
29 in their Report".  
30 The practice of granting relief for life





1 insurance premiums has also been adopted in Australia,  
2 Germany, Holland, South Africa, Switzerland and other  
3 jurisdictions.

4 That is not an exhaustive list, Mr. Chairman.  
5 We have not had the time to make an exhaustive survey.  
6 We have companies, or connections with companies, in  
7 all these jurisdictions, and that is why we cite them.  
8 But we do know that many former British colonial  
9 possessions have these, and we think probably a number  
10 of other jurisdictions do too. This is the point  
11 at which we thought we might break.

12 THE CHAIRMAN: How much time can you give us  
13 this afternoon, Mr. Holmes? I see that time is moving  
14 on, and you probably have plane reservations.

15 MR. HOLMES: Three of us have a plane  
16 reservation at six, and we will have to leave at five.  
17 However, I believe the bulk of our representation can  
18 stay until six.

19 THE CHAIRMAN: Then I think we can probably  
20 finish by five.

21 MR. HOLMES: Well, we can all stay until five.

22 THE CHAIRMAN: Very well, then we had better  
23 proceed.

24 MR. COYNE: I am not sure, Mr. Chairman, that  
25 I would have more than one or two questions on these  
26 general remarks.

27 THE CHAIRMAN: And I have one or two.

28 MR. COYNE: One place where I was a little  
29 curious about the tenor of your argument is in the  
30 wording of your paragraph 6 on page 8, which is dealing





1 with the revenue produced by the premium tax vis-a-vis  
2 what would be produced by a tax on investment earnings.  
3 You quote the relevant figures in the paragraph and say  
4 towards the end of the page:

5 "Bearing in mind the 'social  
6 usefulness' of the life insurance  
7 business, together with the fact  
8 that the business pays the following  
9 additional taxes over and above  
10 general taxes such as real estate,  
11 business and sales taxes, the  
12 difference between revenues  
13 generated by a premium tax and a  
14 tax on interest earnings does not  
15 loom large."

16 Then you list what I take to be the following additional  
17 taxes other than general taxes. With regard to the  
18 income taxes on transfers to shareholders' accounts, I  
19 take those to be income taxes under Section 32.

20 MR. HOLMES: Section 30.

21 MR. COYNE: Section 30 rather. Then the fees  
22 and assessments you have to pay to support the  
23 supervising department of the various governments; and  
24 then you put \$7.5 million income tax on interest earned  
25 by non-resident companies doing business in Canada in  
26 respect of investments in Canada on behalf of non-  
27 Canadian policyholders.

28 Really my question is, why do you consider  
29 that last figure as being relevant in this context? I  
30 take it to be taxes paid by foreign companies on







1 investments which they have made in Canada on behalf of  
2 non-Canadian business.

3 MR. HOLMES: That is true. While I think we  
4 would freely admit, Mr. Coyne, that there was not  
5 complete relevancy, this is a tax that the life  
6 insurance process is paying in capital. That is as  
7 much as you can say for its relevance.

8 MR. COYNE: I see. Can you tell me how that  
9 tax arises? In other words, where the non-resident  
10 companies have investments in Canada that are not  
11 related to their Canadian business, how are they taxed  
12 on that investment income?

13 MR. TUCK: This is a tax which is imposed by  
14 Part III. It is 15 per cent, 5 per cent and zero. It  
15 is a withholding tax which is not applied to these  
16 companies on a withholding basis. They are excepted  
17 from the withholding requirements but instead are  
18 required to file annual returns and pay the tax.

19 MR. COYNE: But it is still the 15 per cent ---

20 MR. TUCK: Yes, the rates are the same.

21 MR. COYNE: Yes, the rates are the same. One  
22 other very general question, Mr. Tuck, which may deserve  
23 a general answer. You refer toward the end to certain  
24 jurisdictions in which relief is provided to policy-  
25 holders in respect of their life insurance premiums, and  
26 you refer to the United Kingdom and to these other  
27 countries on page 11. Perhaps it may be something  
28 of a paradox to consider that notwithstanding the tax  
29 relief which is enjoyed by policyholders in these  
30 various countries, and which I would think should be





1 quite substantial, the Canadian life insurance industry,  
2 without this type of relief for policyholders on their  
3 premiums, has progressed to an enormously greater extent  
4 than has the life insurance industry in these other  
5 countries. Is there any comment that you could make  
6 on that which would be at all useful?

7 MR. A.M. CAMPBELL: I think, if I may be  
8 permitted to answer that, Mr. Coyne, you will find that  
9 in Great Britain, where we do business, the tendency  
10 because of the form of taxes which they have is probably  
11 to sell policies with less insurance element and more  
12 savings element. In other words, instead of selling  
13 life policies they tend to sell endowment policies.

14 MR. COYNE: I take it from the excerpt here,  
15 that provided there is a life element, however small,  
16 in the policy the premium toward a policy qualifies for  
17 tax relief in the United Kingdom?

18 MR. A.M. CAMPBELL: That is right.

19 MR. ADAMA: There is a limitation. Seventy  
20 pounds per 1,000 pounds sum assured is the maximum  
21 premium, which is very conservative. There is another  
22 reason too, and that is the great difference in the  
23 sales organization between Canada and the United States  
24 and the United Kingdom. Only now are they catching up  
25 with modern methods of merchandising in the United  
26 Kingdom with respect to life insurance. For many  
27 years the Canadian companies have been among the leading  
28 life insurance sales organizations in the United  
29 Kingdom.

30 MR. COYNE: This applies equally, Mr. Adams,





1 to Australia, Switzerland and the other jurisdiction  
2 with this form of relief?

3 MR. ADAMS: I am not familiar with the other  
4 jurisdictions.

5 THE CHAIRMAN: I think we are all aware that  
6 Canadian life insurance companies have probably been our  
7 greatest exporters.

8 MR. COYNE: They are the only questions I have  
9 on that portion of it, Mr. Chairman.

10 COMMISSIONER GRANT: On that very point, Mr.  
11 Coyne, on which you are asking questions, would you  
12 have knowledge as to whether or not any part of the  
13 proceeds would be subject to tax in the event of death  
14 if the premiums were exempt from tax?

15 MR. TUCK: I think generally in these  
16 countries the proceeds are not taxed.

17 COMMISSIONER GRANT: In the case of an  
18 annuity, where it would be ---

19 MR. TUCK: The interest factor is taxed.

20 COMMISSIONER GRANT: So it is a deferred  
21 tax in that case, as it is in Canada.

22 MR. TUCK: Yes. There may be exceptions in  
23 some jurisdictions, such as in cases where there is an  
24 excess over the premiums.

25 MR. ADAMS: In the United Kingdom, even  
26 under their pension plans, I believe, the annuity paid  
27 out is taxed at a much reduced rate from earned income.

28 MR. A.M. CAMPBELL: There are also certain  
29 concessions with regard to succession duties on life  
30 insurance policies under the Married Women's Property







1 Act.

2 COMMISSIONER WALLS: This is for my information  
3 because we have been dealing both with participating and  
4 non-participating insurance as far as stock companies  
5 are concerned. Am I right in thinking that the  
6 premium charged for participating whole life is higher  
7 than the premium charged for a non-participating whole  
8 life?

9 MR. TUCK: Yes.

10 COMMISSIONER WALLS: Then are the earnings  
11 in relationship to the surplus charge what you  
12 base the dividend on? In other words, the non-  
13 participating <sup>policy</sup> with a \$20.00 premium and the <sup>like</sup> participating  
14 policy with a \$23.00 premium, let us say, means that  
15 the dividend is based on the \$3.00 difference. Is  
16 that what you base your dividend principally on for  
17 participating policies?

18 MR. HOLMES: I suppose you could consider  
19 the amount earned comes out of that \$3.00, but the  
20 dividend is determined actually by mortality experience,  
21 interest experience and expense experience -- after  
22 making provision for whatever contingencies are thought  
23 necessary for the future.

24 THE CHAIRMAN: It is the balance remaining  
25 in that participating fund correlated with what? How  
26 would one spread that?

27 MR. ADAMS: The amount that is set aside  
28 for allocation of dividends is spread between the  
29 policyholders in proportion to their contribution on  
30 these three items: mortality, depending on their age





1 group, and so on; interest, depending on the amount in  
2 their funds, their reserves; and expense, depending on  
3 the expense attracted by their particular insurance.

4 MR. A.M. CAMPBELL: I think it is safe to say  
5 in explanation that it involves this question. If our  
6 experience over a period of ten, fifteen or twenty years  
7 was better than we anticipated when two identical  
8 policies were issued, one par and one non-par, then the  
9 return on the participating policy to the participating  
10 policyholder would be better than that to a non-  
11 participating policyholder.

12 COMMISSIONER WALLS: Therefore that means that  
13 whatever supplementary return you make on your mortality  
14 table or on your investment out of the non-par policy  
15 naturally goes to the shareholder?

16 MR. A.M. CAMPBELL: Yes, that is so.

17 COMMISSIONER WALLS: Thank you.

18 COMMISSIONER PERRY: You use the divine right  
19 of people who make such calculations quite fully in  
20 measuring the yield of the premium tax against the  
21 yield from personal income tax. If this  $7\frac{1}{2}$  per cent  
22 represents the real burden of the tax, then we have had  
23 a lot of misled people appearing before us. I think  
24 you would more accurately measure it by taking the rate  
25 against taxable income not against total personal  
26 income, which will give a somewhat higher rate than  
27 the  $7\frac{1}{2}$  per cent. However, I agree that this is a matter  
28 of judgment.

29 MR. TUCK: We were not seeking the lowest  
30 possible rate, Mr. Perry.





1 COMMISSIONER PERRY: No, but you have achieved  
2 it though!

3 MR. TUCK: How do you arrive at a rate which  
4 gives recognition to the fact that we have a tremendous  
5 number of policyholders who are not taxpayers?

6 COMMISSIONER PERRY: I agree.

7 MR. A.M. CAMPBELL: The point is that the  
8  $7\frac{1}{2}$  per cent is being applied to the total interest  
9 income of the life insurance companies, which includes ---

10 THE CHAIRMAN: Well, it provides an indication.

11 MR. TUCK: You might have taken a higher  
12 rate and applied it to the interest earnings less what  
13 is necessary to maintain the policy reserve.

14 COMMISSIONER PERRY: Then on your quotation  
15 from the Royal Commission on Income and Profits, the  
16 general tone is favourable, but did they in fact  
17 recommend the continuation of life insurance ---

18 MR. ADAMS: Yes, I have the quotation here.  
19 Were you referring to the words "subject to certain  
20 modifications"?

21 COMMISSIONER PERRY: No. That is a quotation  
22 from a report which sounds as though they are coming  
23 out with an answer which is not actually there.

24 MR. ADAMS: Yes. It is continued on the  
25 present basis. The "certain modifications" they talk  
26 of in the report were interesting. This was a time  
27 when they were increasing the standard rate of tax,  
28 and this was a recommendation that the increase should  
29 not apply to life insurance companies. Therefore, the  
30 relief was limited to the same extent.







1 COMMISSIONER PERRY: I was just kidding you.  
2 that I had read all these reports!

3 THE CHAIRMAN: I have two points and I will  
4 put them as briefly as I can. On page 4 you refer to  
5 double taxation, and I am not sure what you mean. At  
6 the time the federal government entered the corporation  
7 tax field in 1917 the provinces had been left penniless  
8 for many years, going back to 1890, you told us.  
9 According to your statement there the federal government  
10 taxes the transfers to the shareholders, and again  
11 taxes the dividends received by the shareholders, I  
12 presume.

13 MR. TUCK: This sentence does not indicate  
14 as clearly as it might, perhaps, what we have in mind.  
15 As of 1917 there was a tax on our premium income. The  
16 federal government was going into the business of  
17 taxing corporate income. If they had elected to tax  
18 our corporate income on some formula or other, and the  
19 provinces still imposed the premium tax on us, there  
20 would be two taxes. Perhaps that is better than double  
21 taxation. There would be two taxes on the life  
22 insurance process, whereas confining their tax to the  
23 amount transferred to shareholders account they did not  
24 overlap the premium.

25 THE CHAIRMAN: The point is that the premium  
26 tax really was a reduction in the amount transferred  
27 to shareholders account, and therefore was taken into  
28 consideration in the income tax.

29 MR. ADAMS: I think the point we are making  
30 is that if it had read in this way it might have been





1 better: "Double taxation of a policyholder's interest  
2 in the life insurance business was avoided when the  
3 federal government taxed only transfers to shareholders".  
4 The premium tax certainly falls on the policyholder, not  
5 the shareholder.

6 THE CHAIRMAN: Now, turning to page 8, I was  
7 interested by the statement which you make there. As  
8 you gentlemen realize, we must consider all forms of  
9 business, whether they are taxed and whether they are  
10 not taxed. I do not think it is appropriate to ask  
11 you to discuss whether or not mutuals should be taxed  
12 when you have members who are both mutual and non-  
13 mutual. I do not think that you have made  
14 representation about this anyhow in the succeeding  
15 paragraphs. The point is whether or not mutual  
16 interests should bear tax.

17 MR. TUCK: You mean, mutual general insurance  
18 companies?

19 THE CHAIRMAN: No, mutual life insurance  
20 companies.

21 MR. TUCK: We make the point throughout our  
22 thesis that they do pay a tax on premium income. It  
23 is a workable type of tax ---

24 THE CHAIRMAN: I am sorry, I have not made  
25 myself clear. I meant whether or not mutual life  
26 insurance companies should pay any form of income tax.  
27 You are not making any representations one way or  
28 the other on that, I think.

29 MR. TUCK: Yes we are, right now! We do  
30 not think that there should be an income tax on a mutual





1 life insurance company.

2 THE CHAIRMAN: Then if we did not happen to  
3 agree with you and chose to recommend differently -- I  
4 am not giving any indications that that might be the  
5 result -- I assume that to be fair one would have to  
6 recommend some form of tax on participating insurance  
7 policyholders in a company. Is that not the case?

8 MR. TUCK: Yes, that is true.

9 MR. COYNE: I think, Mr. Tuck, we will now  
10 pick up at page 11 and carry on.

11 MR. TUCK: Shall I carry on then, Mr.  
12 Chairman?

13 THE CHAIRMAN: Yes, please.

14 MR. TUCK: From page 11 on, we are commenting  
15 on the questions that the research staff sent to us.  
16 We did not reproduce these questions in this document;  
17 we assume that you have them handy beside you.

18 THE CHAIRMAN: Headed "Questions for the  
19 consideration of the Canadian Life Insurance Officers  
20 Association".

21 MR. TUCK: Yes, that is the document. They  
22 are simply comments without repeating the questions.  
23 Question 1 was in three parts and asks us to compare  
24 life insurance companies with other organizations.  
25 Firstly, in (a) we are asked to compare ourselves with  
26 non-insurance corporations and then with other risk-  
27 sharing organizations, that is, general insurance  
28 companies; then in (b) with co-operatives; and then  
29 (c) investment clubs. Life insurance companies have  
30 certain superficial resemblances to each of these four







1 types of organization, but do not correspond exactly with  
2 any of them.

3 Looking first at non-insurance corporations,  
4 it is necessary before attempting a comparison to examine  
5 the semantics. Even simple words like "sales" and  
6 "reserves" have quite different meanings in life  
7 insurance and non-insurance organizations. It can be  
8 most misleading to consider so-called life insurance  
9 sales of new business in the same context as sales of  
10 automobiles, houses, industrial equipment or wheat.  
11 When any of these things are sold, the profit is  
12 immediately ascertainable and readily made subject to  
13 tax.

14 The sale of new life insurance, however,  
15 involves an initial cost to the company considerably in  
16 excess of the first year's premium. This cost, which  
17 must be paid out of existing surplus, corresponds to a  
18 general corporation investment in inventory. This  
19 inventory, so to speak, in turn must be liquidated,  
20 that is, the initial cost must be recovered gradually,  
21 year by year in the future, as the insurance continues  
22 to be kept in force by the payment of subsequent  
23 premiums.

24 The investment made by a life insurance company  
25 in new business will take many years to repay and the  
26 term cannot be known in advance because it depends on  
27 many variables which only the future can disclose. The  
28 variables include future rates of mortality, expense,  
29 interest earnings and, most important, the rate of  
30 lapse. If adequate provision is not made for such





1 variables the result could be that the investment in  
2 new business would never be repaid.

3 Before deciding, therefore, on the amount of  
4 dividends to be paid in any year to policyholders or to  
5 shareholders, a life insurance company's directors and  
6 management must make a judgment of what the future  
7 holds with respect to those and other factors and  
8 make provision for sufficient reserves from renewal  
9 premiums to provide for adverse trends which might  
10 develop. Such contingency reserves, unlike general  
11 corporate reserves, are for the purpose of ensuring the  
12 payment of guaranteed benefits decades in the future.  
13 Such reserves were used extensively to offset the  
14 adverse mortality experience of World War I and the  
15 1918-19 influenza epidemic, again in the 1930's to  
16 offset falling asset values and reduced investment  
17 earnings and later to offset annuity losses resulting  
18 from both reduced investment earnings and mortality  
19 improvement brought about by progress in medical  
20 science.

21 To force a stock company into the position  
22 of guarding against such variations in its still-to-be-  
23 determined "profit" or "loss" only with after-tax  
24 income would fail to take into account the long-term  
25 nature of its commitments and liabilities.

26 There are, of course, checks against excessive  
27 accumulation of contingency reserves and surplus. A  
28 company must disburse currently sufficient policy  
29 dividends to maintain its competitive position.  
30 Furthermore, the Superintendent of Insurance is interested





1 in seeing that equity is maintained among various  
2 generations of policyholders and would use his  
3 influence to urge a company to keep a proper balance  
4 between surplus and current policy dividends.

5 Canadian life companies are in a more  
6 vulnerable position than United States or United Kingdom  
7 companies in that they are required to value their  
8 holdings of bonds and stocks, except for certain  
9 government bonds, at market values for balance sheet  
10 purposes.

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1 United States companies use amortized values for  
2 practically all bond holdings and specially adjusted  
3 values for preferred stocks. In the United Kingdom  
4 companies are free to change the basis of valuation  
5 for their policy liabilities to accord with changes  
6 in the earnings rate and market value of their assets.  
7 On this account Canadian companies should hold greater  
8 contingency reserves and surplus than either United  
9 States or United Kingdom companies.

10 (1(a)(11)). Looking now at general  
11 insurance companies, we find that while they are alike  
12 in their risk-sharing purpose, they are quite dissimilar  
13 in the terms involved in their risk-sharing guarantees.  
14 Generally life insurance companies provide protection  
15 against contingencies which will arise whereas general  
16 insurance companies provide protection against events  
17 which may or may not occur. Life insurance contracts  
18 provide protection for many years into the future whereas  
19 general insurance contracts are usually limited to a  
20 period of three years or less. Premiums for life  
21 insurance contracts are guaranteed applicable for the  
22 lifetime of a policy which may run for many decades  
23 whereas general insurance companies are in a position  
24 to modify their premium rates at relatively short  
25 intervals not only for new business but for the renewal  
26 of existing business.

27 1(b). Co-operatives have similarities to  
28 the mutual principle in life insurance in that the  
29 purchasers or recipients band together to provide  
30 jointly for their common needs. The similarity stops





1 there, however. Co-operatives have none of the risk-  
2 sharing inherent in the mutual insurance principle where  
3 some get less than they pay and others get more. The  
4 profit or loss of a co-operative, like its competitive  
5 joint-stock commercial enterprise, is immediately  
6 determinable.

7 We do not know whether the tax treatment of  
8 co-operatives is generally appropriate. We do know,  
9 however, that co-operatives do not pay a tax similar  
10 to the premium tax. "Taxation Statistics", published  
11 by the Department of National Revenue, shows that in 1961,  
12 1852 co-operatives paid \$2.3 million in income tax.  
13 (In the same year 716 taxable co-operatives had losses  
14 and 120 were listed as exempt). Figures as to the  
15 "turnover" of the business of the co-operatives  
16 are not available to us other than in the submission to  
17 your Commission of the Co-operative Union of Canada and  
18 Le Conseil Canadien de la Cooperation which shows in  
19 paragraph 13(a) "the volume of co-operative business" in  
20 1961 as \$1,470 million. This figure includes "other  
21 revenue" the amount of which is not indicated but which,  
22 we would judge from the Tables in the submission, is  
23 not large. While we are not sure the analogy is  
24 entirely apt, it is interesting to note that, assuming  
25 the sales of the co-operatives in 1961 were of the  
26 order of \$1.3 billion, a tax on them measured on sales  
27 and imposed at a 2 per cent rate would have produced  
28 \$26 million. The \$2.3 million income tax they  
29 actually paid represented less than 0.2 per cent of  
30 sales.





1 May I again emphasize the statement that we  
2 are not sure of the aptness of the analogy, but we have  
3 drawn the figures out as a matter of interest.

4 1(c). Life insurance companies have little  
5 similarity with investment clubs either in purpose or  
6 method of operation. The primary purpose and the over-  
7 whelming reason for the existence of life insurance is  
8 protection against the adverse financial results of  
9 death. This was originally accomplished by providing  
10 protection for one year at a time with a premium for  
11 that year appropriate to the risk involved as determined  
12 by age and physical condition. Under this system of  
13 "term" life insurance, as a policyholder's age advances  
14 or physical condition deteriorates from year to year,  
15 the premium increases until it ultimately becomes  
16 prohibitive and the insured finds himself without  
17 protection.

18 To overcome this and enable a person to  
19 continue insurance until he dies, "whole life" insurance  
20 was developed. Under this plan a level premium larger  
21 than the term premium in the earlier years is paid  
22 over the whole lifetime of the insured. The excess of  
23 the level premium over the term premium in the earlier  
24 years is retained as a reserve, invested and becomes a  
25 liability of the company to the policyholder. The  
26 accumulation of the "excesses" is used in later years to  
27 augment the level premium when it is less than the  
28 yearly cost of insurance.

29 This is the basic and overriding purpose of the  
30 investment element in life insurance, not saving per se,







1 as in an investment club.

2 The "whole life" principle is modified in two  
3 directions. First, in endowment insurance payment of  
4 the sum assured is anticipated before death if that has  
5 not occurred by a specified date -- frequently a date  
6 coinciding with anticipated retirement -- and this  
7 involves a larger investment element. In the other  
8 direction, a level premium term policy requires a much  
9 smaller investment element to provide for the payment of  
10 premiums on a level basis throughout its term.

11 The interest earnings on the excess of the  
12 level premium over the yearly term premium permit the  
13 business to be done at a level premium over the lifetime  
14 of the policyholder and, of course, do help to reduce  
15 the amount required for the level premium.

16 In question 2(b) -- we jump ahead a little  
17 because of the relevance of what you have just said --  
18 you ask if it would be feasible to attribute a share of  
19 net company investment income to the individual  
20 policyholder. This could only be done at administrative  
21 costs that would be out of line with any possible tax  
22 proceeds. In any event, it would be quite inequitable  
23 as between taxpayers because the only possible way of  
24 doing it would be to assume an average rate of  
25 earnings irrespective of when premiums had been paid  
26 and invested. To give an extreme illustration, this  
27 would mean that a policyholder who had purchased a  
28 single premium policy when new investments were being  
29 made at 3 per cent (the average rate obtainable 20  
30 years ago) would have paid a higher premium and be





1 paying a higher tax than one whose policy was based on  
2 6 per cent -- an obvious inequity which would exist  
3 in varying degrees in all cases.

4 That part of the questions which occupies, I  
5 would think, about half of the memo we got from your  
6 staff is severable for discussion purposes with the  
7 rest, if you would like to pause at this point, Mr.  
8 Chairman.

9 THE CHAIRMAN: Mr. Coyne, would you like to  
10 put a question on that point? I see a member of our  
11 staff in the room. Would you like to confer with him;  
12 he might have some questions?

13 A STAFF MEMBER: I was not directly involved,  
14 sir.

15 MR. COYNE: There are just one or two points  
16 we might explore a little bit. First of all, on  
17 question 1(a) and the comparison with ordinary  
18 corporations or general insurance companies, you make  
19 the point, Mr. Tuck, at the bottom of page 12:

20 "Before deciding, therefore,  
21 on the amount of dividends to be  
22 paid in any year to policyholders  
23 or to shareholders, a life insurance  
24 company's directors and management  
25 must make a judgment of what the  
26 future holds with respect to those  
27 and other factors and make provision  
28 for sufficient reserves from renewal  
29 premiums to provide for adverse  
30 trends which might develop."





1           Then, of course, you have mentioned a number  
2 of these adverse trends which may justify a contingency  
3 reserve. I suppose that the difference in treatment  
4 between life insurance companies and other companies  
5 is not so much in the fact that both of them may have  
6 types of contingencies against which they should properly  
7 set aside reserves out of current income, but that in  
8 the case of the life insurance company alone the  
9 directors and management of the company have complete  
10 discretion as to the size of these reserves which in  
11 effect they can set aside from the shareholders' accounts  
12 and thereby reduce or defer payments of tax.

13           I think one might say generally that in  
14 respect of other businesses there are provisions in  
15 in the Income Tax Act for the setting up of certain  
16 reserves as, for example, bad debt reserves and things  
17 of that nature. But they are all governed by some  
18 objective test that the deduction has to meet in order  
19 to be accepted for tax purposes. In the case of the  
20 insurance companies it is a matter of management's  
21 judgment, if you like?

22           MR. TUCK: Yes, you might go back to the  
23 section of the Insurance Act which uses some language  
24 that I do not think you will find in the Tax Act. It  
25 refers to the directors "determining whether they  
26 deem it safe and proper". It is quite an unusual  
27 expression. But the fact is that we have the  
28 discretion, and we must have it, for the reasons that  
29 we gave. We must have this discretion.

30           MR. HOLMES: I would like to clear up one







1 point here. The reserves we are talking about would not be  
2 within the shareholders' fund. Any money that is  
3 moved to the shareholders' fund would have been taxed  
4 as it moved into the fund. These are reserves which  
5 the directors have felt should be held in the policy-  
6 holders funds to make sure that their contracts are  
7 paid.

8 MR. COYNE: Thank you, Mr. Holmes; I appreciate  
9 the point. I do not think I made it clear. Those are  
10 funds which would otherwise find their way into the  
11 shareholders' fund if they were not set aside for  
12 various reserve purposes.

13 MR. ADAMS: May I give an example of one  
14 reason why they could not go into the shareholders'  
15 fund currently. This is in connection with the long-  
16 term nature of the guarantees we are involved in, which  
17 we have tried to express here, but it is pretty  
18 involved and difficult. Perhaps a simple example  
19 will show what we mean. The year 1963 was one in  
20 which all our companies made a considerable investment  
21 in the new business we produce. We have no chance  
22 of breaking even on that investment for at least 15  
23 years. We will not know until some time then whether  
24 we have made a profit or a loss -- if I can use that  
25 word "profit" in this connection -- from this business.  
26 It may well be that we will never make a profit  
27 because the interest earnings go down, and so on.

28 As a protection against these long-term  
29 uncertainties we simply cannot pay out profits to  
30 shareholders or policyholders without first making





1 provision for all the things that can happen and before  
2 we know whether we are going to get an ultimate gain  
3 or loss.

4 I do not know any other business that has just  
5 this unique position. This is principally the reason  
6 for Section 84 placing on the directors the responsibility  
7 for long-term safety.

8 COMMISSIONER WALLS: The only uncertainty, I  
9 take it, would be in the investment end of your  
10 business?

11 MR. ADAMS: No; one of the biggest factors  
12 is in the termination rate, the life rate of the  
13 policies. As an example of this, the United States  
14 has been doing a tremendous amount of business which  
15 has been sold on the assumption that interest payments  
16 are exempt from the deduction for income tax purposes.  
17 That law is being changed, and there is a very  
18 substantial amount of business written by all companies  
19 over there which will go off the books and result in a  
20 permanent loss. This is just one kind of thing that  
21 can happen.

22 MR. A.M. CAMPBELL : In addition there is always  
23 the possibility of heavy mortality. For example, the  
24 mortality this year with regard to a number of insurance  
25 companies -- I can only speak for some, because the  
26 figures are not all out -- have been heavier than they  
27 have been for a year or two in the past. It is not  
28 always a continuous improvement in mortality.

29 COMMISSIONER WALLS: I am not very smart on  
30 this end of it, but I think you were all using





1 mortality tables that dated back a few years, were you  
2 not?

3 MR. A.M. CAMPBELL: We are pretty well up-to-  
4 date now.

5 MR. ADAMS: This is not participating insurance.  
6 Certainly the current mortality is reflected in the  
7 premiums. In participating insurance, with regard  
8 to current mortality it does not matter what tables  
9 you use in calculating it; it is reflected in the  
10 premium. So it is current mortality that is reflected,  
11 not that of years back.

12 COMMISSIONER WALLS: Where you have risk from  
13 that end of it particularly is because your mortality  
14 table, as I have read, is based on so many thousand  
15 people at each age and their percentage of mortality  
16 experience.  
17 That, as I understood it, included everybody.

18 Do you not have mortality tables that apply  
19 to certain conditions, and then you only accept the  
20 healthy ones?; to have the right right now because of  
21 the fact.

22 MR. ADAMS: No; this is based on insurance  
23 mortality. It is mortality with the people we are  
24 insuring, not general population mortality.

25 The mortality works in the other direction,  
26 too, as we have found out in the past. Most of this  
27 item insurance we are selling has options on maturity  
28 to surrender at 65. Here again we make guarantees of  
29 mortality 20, 40 or 50 years in the future. Medical  
30 science may well keep us all living ten or 15 years  
longer then. This is the type of contingency which the







1 company must take a long term viewpoint of. If all  
2 profits were paid out to shareholders immediately,  
3 certainly we would not be in the position we are in  
4 today, where no life insurance company in Canada has  
5 ever failed.

6 THE CHAIRMAN: Can we move on, before we run  
7 out of time.

8 MR. TUCK: Should I go on, Mr. Chairman?

9 THE CHAIRMAN: Yes.

10 MR. TUCK: This is the middle of page 17,  
11 Question 2(a). This is the question relating to the  
12 United States federal taxation. Our prime contention is  
13 that in the United States federal taxation of the life  
14 insurance business is far too onerous and far too  
15 complicated. The excessive burden seems to be recognized  
16 in that country also because Congress has given relief  
17 in respect of a line of business -- pension -- where  
18 there is competition with others more lightly taxed.

19 As to complications, the United States tax  
20 attempts to reach the "profits" of a company in a  
21 particular year. This is, in our view, an unattainable  
22 goal in a business that is made up in essence of a great  
23 number of individual contracts running over many years.  
24 It might be possible to determine a "profit" for each  
25 such contract at the end of its term but keeping  
26 individual accounts for extensive periods for thousands  
27 of contracts would be an impossible task to put to a  
28 life insurance company.

29 In framing the United States Act an attempt  
30 was made to lessen the uneven impact of earlier Acts on





1 the various types of companies, stock and mutual, large  
2 and small, etc. A satisfactory solution was not found  
3 and the 1959 Act has little support from the industry.  
4 In addition, uncertainties abound and no final  
5 assessments have yet been made in respect of its first  
6 year of operation.

7 The change in the United States taxation of  
8 life companies is of too recent origin to draw any  
9 conclusions as to its impact on the growth of the  
10 business there as compared with its growth in Canada.  
11 It is a fact that the ratio of private life insurance to  
12 national income is significantly higher in Canada than  
13 in the United States. In the next few years it may be  
14 possible to assess the effect of taxes on the business  
15 in the two countries but it is too early yet to form any  
16 conclusions.

17 The adoption by Canada of the 1959 United  
18 States tax basis would create special problems for the  
19 Canadian companies doing business in the United States  
20 because of the retaliatory tax provisions contained in  
21 the premium tax laws of most States. These retaliatory  
22 laws generally provide that a foreign company operating  
23 in the State will pay taxes at the State rate or, if  
24 higher, taxes at a rate equivalent to that which a State  
25 company would pay on its operations in the foreign  
26 country. Under existing laws of many States all taxes  
27 and fees paid in Canada at whatever level of government  
28 imposed would be taken into account by the States, but  
29 the fact that the Canadian companies operating in the  
30 United States pay United States federal income tax





1 would quite likely not be recognized. Of course, down  
2 there there is not the intermixture of federal and  
3 State taxation, and so on, that there is in Canada.  
4 Consequently, any increase in taxes for the life  
5 insurance business in Canada could also result in  
6 increased taxes to many States in the United States for  
7 Canadian companies. Such an additional burden on the  
8 operations of the Canadian companies in the United  
9 States would adversely affect the present favourable  
10 "balance of trade" between the two countries in life  
11 insurance. At present the Canadian companies do more  
12 business in the United States than United States  
13 companies do in this country.

14 With regard to the specific points mentioned  
15 in this question, we have already commented on the  
16 necessity for management to have freedom in determining  
17 reserves. As to separating our profits from mortality  
18 experience, our view is that such a separation would  
19 not be practical for tax purposes because companies of  
20 necessity must exercise their judgment by changing  
21 mortality assumptions from time to time and this affects  
22 their mortality "profits".

23 Question 2(b).

24 As we have mentioned, in the United Kingdom  
25 policyholders are allowed relief in their tax returns  
26 for life insurance premiums and the companies pay no  
27 tax on premium income. The relief to policyholders  
28 and the tax on the companies are, in the words of  
29 the United Kingdom Royal Commission on the Income Tax,  
30 1920, "intimately connected" and must be considered







1 together (paras. 295 and 516 of Report). For 1962-3  
2 the Chancellor of the Exchequer estimated the cost of  
3 the tax relief to policyholders as about £60 million.  
4 The income tax and profits tax paid by the life  
5 insurance companies on their United Kingdom business  
6 in 1962 was approximately £55 million...

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1           There was subsidy, if you wish to call it that,  
2 of £5 million.

3           In the light of these figures, we do not have  
4 anything to add to the comment we made on this question  
5 2(b) in connection with question 1(c).

6           Would you like me to stop there?

7           THE CHAIRMAN: Yes, I think so. Mr. Coyne,  
8 have you got anything on Question 2, the comparison  
9 between U.S. and U.K.

10          MR. COYNE: There is just one question of  
11 rather a general nature that I would like to ask, Mr.  
12 Chairman. Mr. Tuck, you speak of the favourable  
13 balance of trade at the moment.

14          MR. TUCK: Yes.

15          MR. COYNE: As between Canadian companies  
16 doing business in the United States and United States  
17 companies doing business in this country. I believe  
18 that Canadian companies, speaking generally, have been  
19 quite successful in the last recent period, in the last  
20 twenty years or so in increasing the amount of business  
21 they have been able to do in the United States although,  
22 I believe, certain companies seek that business more  
23 than do others. Does the rather more favourable tax  
24 position of the life insurance companies in Canada, do  
25 you think, have anything to do with the ability of the  
26 Canadian companies to extend their United States  
27 business?

28          MR. TUCK: No. Currently, I don't think it  
29 has any effect at all, Mr. Coyne. Canadian companies are  
30 taxed in the United States on a branch basis. The United





1 States operation is revealed in their insurance statement  
2 as if it was a special entity for federal tax purposes.

3 What we are concerned about though is this  
4 rather quirk down there in many of the States in levying  
5 their taxes, where they have a retaliatory provision  
6 that could, if the Canadian tax structure was changed,  
7 put an increasing burden on the company which could be  
8 a one-way action on costing Canadian tax money in the  
9 United States that would not have to be paid by many of  
10 their competitors.

11 MR. COYNE: I take that point and also the  
12 one that you make that Canadian companies doing business  
13 in the United States are taxed on a branch basis under  
14 the applicable United States rate. The point that I  
15 was really thinking of was that in the overall picture  
16 of a company doing business both in Canada and the  
17 United States, the total impact of the income tax would  
18 be less on the Canadian company than it would be on  
19 an American company, because of the more burdensome  
20 method of taxation in the United States.

21 MR. A.M. CAMPBELL: Our practice and I think  
22 the practice of most of the companies operating outside  
23 of Canada is to adjust our premium rates or our  
24 dividends and all of their returns to the policyholders  
25 which is a competitive element based on the earnings  
26 they make in that particular territory, so the fact in  
27 Canada -- the situation would have no effect in the  
28 United States. Likewise, where taxes are lower in  
29 Great Britain we have got to compete there too and  
30 our earnings are based in Great Britain on our premium







1 rates and the dividends there.

2 THE CHAIRMAN: Quite so. Mr. Campbell, the  
3 way you operate in the United States is you set up a  
4 branch office much on the same basis as the U.S.  
5 company. I presume you offer comparable dividends to  
6 the U.S. company and charge comparable premiums and  
7 pay comparable taxes.

8 MR. A.M. CAMPBELL: We meet the market in every  
9 country.

10 THE CHAIRMAN: The taxes would be the same  
11 for your branch as the U.S. company.

12 MR. A.M. CAMPBELL: Yes.

13 MR. COYNE: Your branches are not necessarily  
14 self-sustaining. There is overhead charges and head  
15 office services and that sort of thing which the branches  
16 enjoy. You always meet the market. Do you ever undercut  
17 the market? Surely that would be an option that would  
18 be open to you.

19 MR. A.M. CAMPBELL: No, we don't.

20 MR. ADAMS: This would be impractical. We  
21 could not continue to compete in Canada with those  
22 companies that are still operating in Canada if our  
23 Canadian business policyholders subsidized the U.S.

24 MR. TUCK: Question 3. As indicated by the  
25 figures we have given you, the United Kingdom system is,  
26 in effect, not a tax on life insurance but a subsidy.  
27 The United States system represents the other extreme  
28 among the taxation systems of major countries.

29 If the Commission is reviewing tax systems in  
30 other countries we may be of help. Some of our companies





1 have direct experience with a number of jurisdictions and  
2 we have also obtained information on others. While we do  
3 not pose as experts on all of these tax systems we  
4 believe that none of them bears as heavily on life  
5 insurance policyholders as the United States system --  
6 or at least none in a major jurisdiction.

7 Question 4. As the question indicates, for the 20 per  
8 cent tax credit to affect life insurance companies there  
9 would have to be a tax refund, presumably by permitting  
10 the paying corporation to add the 20 per cent bonus to  
11 dividends being paid to a life insurance company and  
12 then claiming the bonus as a deduction in calculating  
13 its own tax. Such a procedure would, presumably, be  
14 available for dividend payments to universities, pension  
15 funds and similar organizations and the amount of the  
16 tax deductions would be very substantial.

17 We are doing a bit of guessing in that answer  
18 to this extent, Mr. Chairman, as to what was in mind.  
19 We may not have gotten the point quite right. In any  
20 event we thought we would draw to your attention that  
21 in the U.K. there is some sort of system that has some  
22 relevance to giving corporations an advantage on some  
23 tax differential applying to individuals. It is  
24 described in the Canada Tax Foundation publication  
25 "Tax Abroad in the United Kingdom" which just came out  
26 last month, on page 6 in the first column.

27 Question 5. The Department of National Revenue,  
28 Taxation Division, has kept records of the use of life  
29 insurance policies as registered retirement savings  
30 plans. It may be that you have obtained these





1 since the questions were written. I don't know. In any  
2 event if you have not got them from the Department we  
3 will be glad to check with them and see if what we  
4 have is up-to-date and file them with you.

5 THE CHAIRMAN: Thank you very much.

6 MR. TUCK: These figures, together with  
7 those for other savings plans, may be in your possession  
8 but if not we can give them to you.

9 We do not know whether the Department has  
10 figures for premiums paid under these plans. In any  
11 event we do not have such figures.

12 The next question asked "What are the factors  
13 explaining the recent tendency towards mutualization".

14 THE CHAIRMAN: This is a pretty important  
15 matter. I wonder if anybody has any questions before  
16 Question 6. Are we tidied up to that?

17 MR. COYNE: I wonder, just one question of  
18 clarification Mr. Chairman. Dealing with the United  
19 Kingdom system Question 2(b) on page 19 you say in the  
20 United Kingdom policyholders are allowed relief in their  
21 tax limits for life insurance premiums and the companies  
22 pay no tax on the premium income.

23 MR. TUCK: Yes.

24 MR. COYNE: I take it they would be taxed  
25 on investment income?

26 MR. TUCK: Yes. Going down to your  
27 substantial figures the cost of this relief to policy-  
28 holders is £60 million. That is perfectly clear.  
29 Then income tax and profits tax paid by the companies  
30 was £55 million. That is imposed wholly on their







1 investment income.

2 MR. TUCK: Yes, on investment income.

3 MR. COYNE: Attributable to investment?

4 MR. TUCK: No, more than investment expenses.

5 It is all expenses of management.

6 MR. COYNE: Can you give us the tax base for  
7 these taxes in the United Kingdom?

8 MR. ADAMS: It is very involved. That is the  
9 best way to describe it. They tried to exempt annuities  
10 from that. They didn't do it directly but by splitting  
11 it up in all kinds of proportions which would have had  
12 different effects on different companies. It is very  
13 complicated.

14 COMMISSIONER PERRY: I just wondered on that;  
15 assuming that part of what they pay is the standard  
16 rate, is there any quick answer to whether the benefits  
17 of that carry through to the shareholders of life  
18 insurance companies in a way that the standard rate  
19 does with other companies? If there is, I imagine it is  
20 quite involved.

21 MR. ADAMS: Yes. I can't answer that.

22 MR. A.M. CAMPBELL: It is interesting though  
23 at the moment one of the political parties in England,  
24 I think it is the Liberal Party, has put forward  
25 proposals that this whole thing should be wiped out since  
26 these two things are roughly in balance. They are part  
27 and parcel of the same system and they would save an  
28 awful lot of administrative expenses if they did away  
29 with the whole thing. This would undoubtedly be passed  
30 on to the policyholders because the cost of insurance in





1 Great Britain today is probably the cheapest insurance  
2 country of all.

3 COMMISSIONER PERRY: I was thinking about the  
4 fact that the normal standard rate is a credit which  
5 can be deducted by the shareholder of the company against  
6 his personal income tax. There must be shareholders  
7 of stock in insurance companies in England whom, one  
8 would think, would benefit from the standard rate paid  
9 by the company.

10 MR. ADAMS: It would be a benefit in relation  
11 to the relief gained by the policyholder.

12 COMMISSIONER PERRY: Yes. I have no knowledge  
13 and didn't try looking it up.

14 MR. A.M. CAMPBELL: Does that not come, Mr.  
15 Chairman, on any difference between the gross and the  
16 net rate declared to the shareholders?

17 THE CHAIRMAN: Yes, there would be a grossing  
18 up procedure.

19 MR. A.M. CAMPBELL: I think that is the way  
20 that would come in.

21 MR. COYNE: Just one further point, Mr.  
22 Chairman. You referred to Question 4 as being rather  
23 academic, Mr. Tuck, but there was one aspect of it that  
24 I wondered if you could comment on. Would the  
25 investment policies of the company be significantly  
26 affected if the credit were made available to insurance  
27 companies? In other words I presume if there was some  
28 tax advantage to be derived from income from dividends  
29 rather than from interest or rents.

30 MR. TUCK: Yes. Well, we have not commented on





1 that.

2 MR. A.M. CAMPBELL: I think the answer for  
3 all companies would be if in any way we could improve  
4 our yield to give better returns to our policyholders  
5 and keep in competition that we would do it. In so far  
6 as this would be a tax benefit, the stocks may be more  
7 attractive. Therefore the companies might have some  
8 stock in their portfolio.

9 MR. COYNE: That is a pretty cautious view.  
10 It is not likely to lead you to rush out and divert any  
11 significant portion of your portfolios into common  
12 stock.

13 MR. A.M. CAMPBELL: No, because I don't think  
14 this would be a sufficient matter for that.

15 MR. COYNE: Thank you.

16 MR. A.M. CAMPBELL: I think the other problem  
17 is the shortage of qualifying stock in Canada in the  
18 volume that life insurance companies would go into.

19 MR. COYNE: That is qualifying stock in in  
20 insurance companies.

21 MR. A.M. CAMPBELL: Yes.

22 MR. COYNE: Is this a significant factor in  
23 limiting your investments in this field?

24 MR. A.M. CAMPBELL: I can only answer that by  
25 the fact that in my time in the Canadian Life Insurance  
26 Officers Association I don't believe we have ever made  
27 any representations in regard to changing the  
28 qualification base and in part I think this is answered  
29 by the fact we have what is known as a basket in which  
30 we can put stocks that are not eligible under the stock







1 provisions.

2 MR. TUCK: Question 6 relates to factors that  
3 brought about the mutualization of Canadian life  
4 insurance companies were outlined by the then Minister  
5 of Finance when he introduced legislation authorizing  
6 this process in Parliament on December 3, 1957. In  
7 brief, there were two factors. As a life insurance  
8 company increases in size the capital contributed by  
9 shareholders becomes less and less important so far as  
10 protection to policyholders is concerned. The principal  
11 strength of the company increasingly lies in the  
12 policyholders' funds. The point is therefore reached  
13 where a company may decide that it is in the long-term  
14 interest of the policyholders themselves to employ their  
15 funds to buy out the shareholders.

16 The second factor was that the control of the  
17 shares of a number of Canadian companies had passed to  
18 non-residents and was in danger of passing in other  
19 companies. The government felt it was desirable to  
20 retain control in Canada, particularly because of the  
21 small size of the capital of the companies in relation  
22 to their total funds, and that this could be done by  
23 legislation authorizing mutualization, a procedure already  
24 recognized as a normal one in at least two other  
25 countries, the United Kingdom and the United States.

26 It should be noted that mutualization is only  
27 a partial answer to retaining control in Canada. There  
28 is a tax point involved here that you may wish to  
29 inquire into. If a company does not wish to  
30 mutualize, or is unable to do so because of the requirements





1 of the legislation, the potential impact of estate taxes  
2 and succession duties may result in Canadian shareholders  
3 having to sell their shares -- and frequently the  
4 highest bidders will be non-residents.

5 As was mentioned earlier, many people in the  
6 United States have ideas about the value of Canadian  
7 shares. It has tended to drive shares of the existing  
8 companies up to a basis where they are yielding a little  
9 over 1 per cent. If you are a big holder of shares  
10 yielding 1 per cent, you have got yourself a potential  
11 income tax and Succession Duty problem.

12 However, this is a problem that might be  
13 justified to isolate this type of corporation, I don't  
14 know. It is one we thought we should mention to you.

15 THE CHAIRMAN: Thank you.

16 MR. COYNE: Excuse me, Mr. Tuck. On this last  
17 point, you say at the bottom of page 21 that mutualization  
18 is only the partial answer to retaining control in  
19 Canada. Is your meaning really that authority to  
20 mutualize is only the partial answer to retaining control  
21 in Canada.

22 MR. TUCK: Yes, quite right. This carries  
23 another implication. That is not so.

24 MR. COYNE: If mutualization is carried out  
25 that is the end of the problem.

26 MR. TUCK: That is right; as long as the  
27 company sees the management and control is in Canada  
28 and it does a substantial amount of business in Canada,  
29 it will be fixed here, even if its policyholders are  
30 around the world.





1 COMMISSIONER WALLS: What is the position  
2 of the previous shareholders once you mutualize a  
3 stock company?

4 MR. TUCK: They are bought over entirely.

5 COMMISSIONER GRANT: It simply requires  
6 legislation whereby the company is permitted to buy  
7 its own shares.

8 MR. TUCK: Yes. This legislation went into  
9 effect in 1957 and five of the Canadian companies have  
10 since mutualized, including three which are represented  
11 here today.

12 Question 7 is does the 2 per cent collected  
13 by the provinces apply to all life insurance premiums  
14 without exception.

15 Here is again a question of semantics because  
16 life insurance means life insurance or it means life  
17 insurance and annuities, depending on the context so  
18 we thought we had better answer it on the assumption  
19 that the question was really thinking about the broader  
20 meaning.

21 Question 7. We pay tax to the provinces  
22 on all life insurance premiums, that is, all types of  
23 insurance payable on death and all endowment insurance.  
24 We do not pay tax on annuity premiums.

25 A large part of our annuity business is in  
26 registered pension plans and registered retirement  
27 savings plans. The annuities as they emerge are subject  
28 to income tax, including the investment earnings. As to  
29 annuities that are not so registered, income tax falls  
30 on investment earnings after the annuity vests but not







1 before except where the annuitant exercises an option  
2 to take a cash settlement in lieu of his annuity. This  
3 latter exception was made for new annuity contracts in  
4 the latest amendments to the Income Tax Act.

5 The absence of premium tax on annuity contracts  
6 probably arises from the fact that they are "savings  
7 deposits" analogous to deposits in a bank. No tax  
8 falls on such deposits as they are made. Also, the  
9 federal government has been in the annuity business since  
10 1908 and presumably neither it nor the provinces  
11 thought this business should bear tax.

12 We have no accurate figures as to the ratio  
13 of our registered annuities to our unregistered annuities  
14 but our estimate is that about 88 per cent are  
15 registered and 12 per cent unregistered.

16 Question 8. The absence of tax on amounts  
17 attributable to shareholders from the Canadian business  
18 of a non-Canadian stock life insurance company is of  
19 long standing and, we admit, appears to be anomalous.  
20 The fact is, however, that the business of these  
21 companies in Canada is not large and the other companies,  
22 Canadian and non-Canadian mutual and Canadian stock,  
23 have never felt they were under a sufficiently serious  
24 competitive disadvantage to register any objection.

25 MR. COYNE: In other words, we are talking here  
26 only of non-Canadian companies with joint stock  
27 capital?

28 MR. TUCK: That is right.

29 MR. COYNE: Mutual companies would be exempt  
30 in any event?





1 MR. TUCK: Yes.

2 MR. COYNE: Therefore any competitive dis-  
3 advantage would only be a factor with regard to the  
4 joint stock companies. You say the business of these  
5 companies is different from the mutual companies.

6 MR. TUCK: That is right. The business of  
7 the non-Canadian stock company in Canada is not large.  
8 There are quite a number of them though.

9 MR. COYNE: But the big American companies  
10 are mutual companies.

11 MR. TUCK: That is right. One of the biggest  
12 British companies, the Standard, is a mutual company.

13 We are asked if we think the Act gives  
14 adequate allowance for foreign taxation.

15 Question 9. Canadian life insurance  
16 companies doing business in other countries have not  
17 suggested modifications in the foreign tax credit  
18 provision of the Income Tax Act applicable to them.  
19 Normally foreign income taxes are heavier than the  
20 Canadian tax otherwise payable on the business  
21 attributable to the foreign jurisdiction. This is  
22 because premium taxes are not taken into account in  
23 either direction. By this we mean Canada does not tax  
24 premiums received from residents of other jurisdictions  
25 and no credits are given against Canadian income tax  
26 for premium taxes paid elsewhere.

27 To summarize our views, we believe that the  
28 income tax paid by life insurance companies on transfers  
29 to shareholders' account and the premium tax, taken  
30 together, (1) constitute a workable and equitable basis





1 for the taxation of the companies, bearing in mind the  
2 type of business they transact, and (2) represent a  
3 fair share of the general taxation burden for the  
4 companies and their policyholders to bear. We also  
5 believe that the premium tax has the merit of  
6 administrative simplicity, for the tax authorities  
7 and for the companies, and that it has an even impact  
8 on the cost of insurance for both participating and non-  
9 participating policyholders.

10 THE CHAIRMAN: I suppose the reason that the  
11 income tax paid by the Canadian insurance companies  
12 appears to be low -- it seems to be about \$2 million.

13 MR. TUCK: Yes.

14 THE CHAIRMAN: Is largely because of the  
15 extent to which the insurance is carried out by mutual  
16 companies, 40 per cent, and the extent to which the  
17 balance of it is in the form of participating insurance  
18 policies.

19 MR. TUCK: That is quite right.

20 COMMISSIONER GRANT: It occurs to me that  
21 the dividend which is declared and credited from time  
22 to time on a participating policy and which earlier  
23 this afternoon we discussed, as not being taxable as  
24 income, that when that policy becomes a death claim,  
25 the face value of the policy is paid and accumulated  
26 dividends are also paid at the same time.

27 MR. TUCK: Yes.

28 COMMISSIONER GRANT: I have never heard that  
29 the income tax authorities regarded that as income.

30 MR. TUCK: No.







1 COMMISSIONER GRANT: It must be they regard  
2 it as a return on premium.

3 MR. TUCK: Yes, sir.

4 MR. ADAMS: This is what it is, in effect.  
5 The word "dividends" is again a matter of semantics.

6 COMMISSIONER GRANT: You are asking for it.  
7 It is your word.

8 MR. ADAMS: Yes. We have many of those.

9 THE CHAIRMAN: I inquired about "profits"  
10 at the beginning. The reason why you steer away from  
11 profits is because you object to the determination of  
12 whatever it may be year by year. You think that the  
13 results can only be determined over a long period of  
14 time, and you think that the profits are related in  
15 some way to an annual determination. I am not sure  
16 whether that is correct, but it is becoming frequent  
17 to speak of annual profits, and I think you want to  
18 get away from the word "annual".

19 MR. A.M. CAMPBELL: That is made clear by  
20 British insurance companies which conduct all classes  
21 of business. They are basically divided into life  
22 insurance companies and long term business, long term  
23 business and short term business.

24 MR. ADAMS: Within the same company.

25 MR. A.M. CAMPBELL: Yes, within the same  
26 company.

27 MR. COYNE: I have one question which arises  
28 from the foreign tax credit point which you deal with  
29 in your answers to question 9 on page 23, but rather  
30 briefly. I should like to ask this question, whether





1 the existing relief granted under section 41 of the  
2 Income Tax Act effectively avoids double taxation of  
3 the same income. I take it it does because, in effect,  
4 you get full credit for the foreign tax paid because  
5 they are always higher than what you would pay in  
6 Canada.

7 MR. TUCK: Yes. I suppose that there have  
8 been times, if you went back some years into some  
9 particular jurisdiction, where income tax may have been  
10 less <sup>than</sup> the Canadian tax attributable to it.

11 MR. COYNE: It has never been a problem which  
12 has caused concern?

13 MR. BROWN: There have been certain cases  
14 where you are taxed on a different basis in a foreign  
15 country, and where you have made a loss instead of  
16 earning a taxable income, in which case you would have  
17 no tax credit there. Then the following year you  
18 might have made a profit and get the full credit.

19 MR. COYNE: Then perhaps I should ask, Mr.  
20 Brown, because other people not in the insurance  
21 business but carrying on business abroad on a branch  
22 basis have made this very point because it is a matter  
23 of some concern to them. Nevertheless, although this  
24 can happen -- that is, determination of income in a  
25 foreign state on a different calendar basis from the  
26 determination in Canada, that is not a serious enough  
27 problem for the Association to have been concerned  
28 with it?

29 MR. BROWN: No, it is certainly not the case.

30 THE CHAIRMAN: Well, we seem to have timed this





1 rather nicely. We are very grateful indeed to you for  
2 having given us the help you have given us this  
3 afternoon. I think this will give us a much better  
4 understanding of the life insurance business. It is  
5 the first time that we have really had a look at it, and  
6 I can assure you that it will help our staff to probe  
7 deeper. By the time we come to our report, which is  
8 some distance off, I think we will know this business  
9 better than we do now. This has been an interesting  
10 and helpful afternoon and we are indeed grateful to  
11 you gentlemen.

12 MR. HOLMES: Before you adjourn the meeting, Mr.  
13 Chairman, may I thank you on behalf of our delegation,  
14 and through you the Commission and staff. I think it  
15 has come up many times that this is a business mixed  
16 with many features which are different from other  
17 businesses, and we feel that the questions which have  
18 been asked and the discussion which has taken place  
19 has been very helpful to us. We have been able to  
20 explain our business to the Commission and we thank  
21 you very much.

22 THE CHAIRMAN: That is nice to hear, thank you.

23 MR. HOLMES: If you wish further information  
24 from us before you write your report I should say that  
25 we are available.

26 THE CHAIRMAN: Thank you very much indeed, and  
27 I think we may need some further help. We are grateful  
28 for the offer.

29 We will now stand over until 9:30 tomorrow  
30 morning.

---The hearing adjourned at 5:05 p.m.

















